TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~300.~~ 158

ZADOK HOOK ET AL., APPELLANTS,

vs.

ANN PAYNE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

FILED DECEMBER 8, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 360.

ZADOK HOOK ET AL., APPELLANTS,

vs.

ANN PAYNE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Bill of injunction	1	1
Bill filed	14	6
Summons	14	6
Marshal's return on summons	15	7
Demurrer to bill filed	17	7
Demurrer to bill	18	8
Replication to demurrer filed	19	8
Replication to demurrer	20	9
Demurrer to bill sustained	20	9
Continuance set aside	21	9
Leave to amend withdrawn—complainant to abide decision of court on demurrer	21	9
Bill dismissed	21	10
Appeal allowed	22	10
Bond filed and approved	22	10
Bond of appellant	22	10
Motion to consolidate	24	11
Cases consolidated	25	12
Separate answer filed by defendant Hook	26	12
Answer of Zadok Hook	26	12
Schedule of bad debts filed	46	20
Schedule of bad debts	46	20
Agreement of counsel filed	47	21
Agreement of counsel	47	21
Joint answer filed	48	21
Answer of all defendants	48	22
Replication to answer of defendants filed	50	23
Replication to answer of defendants	50	23
Interlocutory decree	52	23
Affidavit of S. T. Glover	55	25
Application for commission to take testimony filed	59	27

SUPREME COURT OF THE UNITED STATES.

No. 360.

ZADOK HOOK ET AL., APPELLANTS,

vs.

ANN PAYNE ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Bill of injunction	1	1
Bill filed	14	6
Summons	14	6
Marshal's return on summons	15	7
Demurrer to bill filed	17	7
Demurrer to bill	18	8
Replication to demurrer filed	19	8
Replication to demurrer	20	9
Demurrer to bill sustained	20	9
Continuance set aside	21	9
Leave to amend withdrawn—complainant to abide decision of court on demurrer	21	9
Bill dismissed	21	10
Appeal allowed	22	10
Bond filed and approved	22	10
Bond of appellant	22	10
Motion to consolidate	24	11
Cases consolidated	25	12
Separate answer filed by defendant Hook	26	12
Answer of Zadok Hook	26	12
Schedule of bad debts filed	46	20
Schedule of bad debts	46	20
Agreement of counsel filed	47	21
Agreement of counsel	47	21
Joint answer filed	48	21
Answer of all defendants	48	22
Replication to answer of defendants filed	50	23
Replication to answer of defendants	50	23
Interlocutory decree	52	23
Affidavit of S. T. Glover	55	25
Application for commission to take testimony filed	59	27

INDEX.

	Original.	Print.
Order for commissions to take testimony	60	27
Order to open depositions	61	28
Report of master and exceptions of defendants filed	62	28
Report of master	62	28
Deposition of Zadok Hook before master	66	30
Exhibit "A" to deposition of Zadok Hook	79	35
Exhibit "B" to deposition of Zadok Hook	80	36
Decision of master	82	36
Statement of facts filed before master	98	46
Answer to statement of facts	109	50
Exceptions of defendants to master's report filed before master	120	55
Exceptions of defendants to master's report and petition for rehearing filed.	122	56
Exceptions of defendants to report of master filed in court	122	56
Petition for rehearing	126	58
Final decree	133	60
Filing of motion to set aside final decree	137	62
Motion to set aside final decree	137	62
Appeal allowed	144	65
Bond of appellants	145	66
Agreement for appeal filed by counsel	148	67
Agreement of counsel for appeal	148	67
EVIDENCE FOR PLAINTIFFS.		
Bond of Zadok Hook as public administrator of Callaway County	149	69
Transcript of record of proceedings of Zadok Hook as administrator of Callaway County	152	70
Inventory of estate of Fielding Curtis	153	71
Deposition of Abiah Guinn	201	99
Deposition of George E. Marshall, taken September 22, 1869	204	100
Deposition of Susan Curtis	206	101
Deposition of Peter J. Norris, taken September 23, 1869	216	105
Deposition of Mary Guinn	227	110
Deposition of John J. Payne, taken at Culpeper, September 24, 1869	236	113
Deposition of Samuel R. Rixey	243	116
Deposition of Fayette M. Latham, taken September 25, 1869	247	117
Exhibit No. 1 to depositions of Norris and Payne	253	120
Deposition of Isaac W. Boulware	254	121
Deposition of N. C. Kouns	256	121
Exhibit "A" to deposition of N. C. Kouns	263	124
Agreement of parties by counsel	268	126
Copies of notes referred to in agreement of parties	269	126
Copy of mortgage deed by Huston and wife to Hook	271	127
Deposition of Hook, taken at Fulton, December 20, 1869	274	129
Exhibit No. 1 to above deposition of Hook	322	147
Exhibit No. 2 to above deposition of Hook	322	147
Exhibit No. 3 to above deposition of Hook	322	147
Exhibit No. 4 to above deposition of Hook	323	148
Exhibit No. 5 to above deposition of Hook	325	148
Exhibit No. 6 to above deposition of Hook	327	150
Exhibit No. 7 to above deposition of Hook	328	150
Exhibit No. 8 to above deposition of Hook	330	151
Deposition of John J. Payne, taken at Culpeper, March 8, 1870	331	152
Exhibit "A" to above deposition of Payne	346	158
Exhibit "B" to above deposition of Payne	347	158

	Original.	Print.
Exhibit "C" to above deposition of Payne	349	159
Deposition of Jeremiah Morton, jr	350	159
Exhibit No. 1 to above deposition of Morton	352	160
Deposition of Peter J. Norris, taken at Culpeper, March 8 and 9, 1870	353	161
Exhibit No. 1 to said last deposition of Norris	372	168
Exhibit "D" to said last deposition of Norris	375	170
Exhibit "E" to said last deposition of Norris	376	170
Exhibit "F" to said last deposition of Norris	377	170
Exhibit "G" to said last deposition of Norris	379	171
Exhibit "H" to said last deposition of Norris	379	172
Deposition of F. M. Latham, taken March 9, 1870	381	172
Exhibit "A" to above deposition of Latham	384	173
Indorsement on Exhibit "A"	385	174
Deposition of Thomas R. Rixey	385	174
Exhibit No. 1 to this deposition is copied on page	372	168
Deposition of George E. Marshall, taken March 10, 1870	386	175
Exhibit No. 1, referred to in said last deposition, is copied on page	372	168
Letters of administration by Henry Gambs on the estate of Phares Guinn, and proceedings thereon, marked X, No. 1	389	176
Letters of administration on estate of John J. Curtis, marked X, No. 2	393	178
Letters of administration on estate of Abraham Curtis, marked X, No. 3	397	180
Decision of Commissioner of Internal Revenue, marked X, No. 4	400	182

EVIDENCE FOR DEFENDANTS.

Deposition of Hook taken at Fulton, December 20, 1869, (copied on page 274)	402	183
Deposition of Zadok Hook before master, (copied on page 66)	402	183
Deposition of John A. Hockaday	402	183
Exhibit No. 1 to said deposition of Hockaday	416	188
Deposition of Daniel Nolley	417	189
Deposition of George Bartley	420	190
Deposition of J. J. P. Johnson	422	191
Deposition of Henry S. Turner	425	193
Deposition of Samuel H. Berry	428	194
Deposition of William H. Bailey	429	195
Deposition of Harvey Newsom	431	196
Deposition of William Carrington	434	197
Deposition of John A. Flood	439	199
Deposition of James Rickenbaugh	440	200
Deposition of Thomas B. Harris	442	201
Deposition of John Bartley	443	201
Deposition of William Harrison	448	203
Deposition of Monroe Sampson	449	204
Deposition of Henry Larimore	451	205
Deposition of Achilles Wilkerson	454	207
Deposition of Lewis Ruhle	458	208
Clerk's certificate	461	209

1 MISSOURI DISTRICTS, *set.*

Pleas before the honorable circuit court of the United States for the districts of Missouri, at the April term thereof, A. D. 1870.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.

Be it remembered, that heretofore, to wit: on the twenty-fifth day of January, A. D. eighteen hundred and sixty-seven, the complainant in the above-entitled cause, by her solicitors, filed in the office of the clerk of the circuit court of the United States for the districts of Missouri her bill in chancery against the aforesaid defendants, which said bill in chancery is in the words and figures following, to wit:

Bill of injunction.

To the judges of the circuit court of the United States for the districts of Missouri in chancery sitting.

Ann Payne, a citizen of the state of Virginia, brings this her bill against Zadoc Hook, William Carrington, Samuel Watson, Monroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John Baker, William I. Bedsworth, Henry Larimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, John West, Thomas I. Baker, Martin Baker and John A. Adkins, all of Calloway County and citizens of Missouri, and

2 thereupon said Ann Payne complains and says her brother, Fielding Curtis, departed this life at his residence in Callaway County, Mo., in Feb'y, 1861; that said Fielding never married; left no lineal descendants, father or mother living at the time of his death; that the estate which he possessed at his death, so far as known, consisted wholly of personalty, that at his death his next of kin entitled to distribution of his estate were the following, to wit: (1.) Ann C. Burnham, wife of David M. Burnham, and Virginia W. Sappington, wife of W'm J. Sappington; said Ann and Virginia being only children of W'm Curtis, a brother of said Fielding Curtis, he, said William, having departed life prior to the death of said Fielding Curtis. (2.) Abraham Curtis, a brother of said Fielding, who departed life in the summer of 1866. (3.) Susan Curtis, a widowed sister of said Fielding Curtis. (4.) The children of Elizabeth Guinn, a widowed sister of said Fielding Curtis, who departed life before said Fielding. (5.) The children of Eligah Curtis, a brother of said Fielding, who departed life before said Fielding Curtis. (6.) The children of Sarah Wilhoite, a sister of said Fielding Curtis, who departed life prior to said Fielding. (7.) Mary Guinn, a widowed sister of said Fielding. (8.) Your complainant, Ann Payne, a widowed sister of said Fielding; and that complainant was and is entitled to one-eighth part, undivided, of said

3 personal estate of Fielding Curtis, deceased.

That said Fielding Curtis' estate, at the time of his decease, consisted of money, bank-notes, individual promissory notes, bonds, bills, & obligations for debts & liabilities due to him from sundry persons, slaves and some other articles of property, not exceeding one hundred dollars ($100) in value. That the whole amount of available assets of said estate, including interest on money due said *said* Fielding at his death, amounted to not less than eighty thousand dollars.

That said Zadoc Hook was public administrator of the county of Cal-

laway, and on the eighteenth day of March, 1861, by order of the county court of Callaway, took into his charge as such the administration of said Fielding Curtis' estate. In the same month and year, said Hook, administrator as aforesaid, returned his inventory of said decedant's estate, amounting only to the sum of 66,538 dollars, exclusive of the slaves belonging to said estate; that said slaves were worth not less than five thousand dollars.

May 20th, 1862, said Hook, as such administrator, made his first annual settlement, showing a balance on his hands of that date amounting to 69,612 $\frac{68}{100}$ dollars. In May, 1863, said Hook, as such administrator, made his second annual settlement, showing a balance then in his hands of 65,184 $\frac{96}{100}$ dollars. In May, 1864, said Hook, as such administrator, made his third annual settlement, showing a balance then in his hands amounting to 64,542 $\frac{09}{100}$ dollars. In May, 1865, said Hook, as such administrator, made his fourth annual settlement, showing a balance then in his hands amounting to the sum of 63,586 $\frac{76}{100}$ dollars, which was and is the last settlement of his accounts as such administrator, which said Hook has made with the Callaway County court, and ever since said Hook has failed and neglected to take any other further steps towards the administration and settlement of said estate, which said several settlements will be produced and shown to the court as part of the proceedings in said administration of record in the office of the clerk of said county court.

The complainant states that said settlements of said administrator Hook were false and fraudulent, as follows: that there were in the hands of said administrator Hook more than fifteen thousand dollars of assetts belonging to said Fielding Curtis' estate, consisting of money, gold and silver, bonds and notes, and obligations calling for money, the property of said Fielding at his death, which came to the hands of said administrator and remained in his hands, and the proceeds and value of which are now in his hands, and which he failed to inventory or account for in his administration of said estate; that in said first annual settlement of said administrator he failed & refused, fraudulently, to account for or charge himself with a large amount of money, to-wit: twenty thousand dollars belonging to said decedant's estate, which he received for interest on money of said estate, and which has ever since remained in his hands unaccounted for, nor did he in any other settlement or in any way charge himself with or account for said last-mentioned sum of money. That in said second annual settlement, he, said administrator, failed and refused to account for or charge himself with another large sum of money, to wit: twenty thousand dollars belonging to said estate of said decedant, for interest received by him on money belonging to said estate, and which has ever since remained in his hands unaccounted, nor did he in any other settlement or in any way charge himself with said last-mentioned sum of money or account for the same. That in his third annual settlement he failed and refused to account for or charge himself with another large amount of money belonging to said estate, for interest received by him on moneys of said estate, viz: twenty thousand dollars, nor did he in any other settlement or in any way charge himself with or account for the same. In his fourth annual settlement, said Hook, as such administrator, failed and refused to charge himself with or account for another large sum of money belonging to said estate, on account of interest received by him on money of said estate, viz: twenty thousand dollars, all of which said sums of money have remained in the hands of said administrator, and still remain in his hands unaccounted for.

That said administrator received ten per cent. on all the notes, bonds, and obligations belonging to said estate up to the time when the same were collected by him in the course of administration. That he collected a small portion of said bonds, notes, and obligations, say not over ten thousand dollars, prior to September 24th, 1862. That afterwards he collected and received the residue of said notes, bonds, obligations, and assetts belonging to said estate.

That said administrator employed and used the funds of said estate in his hands for his private gain in every way he could, in trade, speculations in buying and selling gold coin, in shaving paper, in loaning the same at high and even usurious interest. That he never received less than ten per cent. interest on all the money in his hands, and for a great part of it he received interest at the rate of twelve, fifteen, twenty, and twenty-five per cent. per annum. That for such purpose the said Hook sent to St. Louis the money of said estate in his hands as such administrator, and kept it there in order to so use it, and did so use it in speculations for his own personal benefit. That each and every entry in his several settlements by which he credits the said estate with interest on the money in his hands at the rate of six per cent. only is false and fraudulent. That

7 his failure to charge himself with at least ten per cent. interest per annum on all the moneys in his hands was and is fraudulent. That his failure to account for more than ten per cent. interest on nine-tenths of said moneys was and is fraudulent. That the charge against himself as administrator in his third annual settlement of 1,460 dollars interest received is false and fradulent for being less than the amount of interest which ought to have been charged against him. That the charge against himself in his fourth annual settlement of 540 dollars for "interest received" was and is false and fraudulent for being less than the amount of interest which ought to have been charged against him in that behalf.

Your complainant states that the following items of credit to said administrator in his several settlements aforementioned were illegal and fraudulent, viz: The item $4341\frac{65}{100}$ dollars paid to David M. Burnham & wife, the item $397\frac{96}{100}$ dollars for interest thereon; the item $1214\frac{47}{100}$ dollars paid to William J. Sappington and wife, the item of $83\frac{3}{100}$ dollars interest thereon; the item 1100 dollars paid to William J. Sappington and wife, the item $10\frac{08}{100}$ dollars interest thereon; the item $180\frac{70}{100}$ dollars paid William J. Sappington and wife, the item $5\frac{50}{100}$ dollars interest thereon; the item $111\frac{08}{100}$ dollars paid William J. Sappington and wife, the item $5\frac{25}{100}$ dollars interest thereon; the item $57\frac{26}{100}$ dollars paid William J. Sappington and wife, the item $3\frac{15}{100}$ dollars interest thereon; the

8 item $261\frac{88}{100}$ dollars paid William J. Sappington and wife, the item $37\frac{30}{100}$ dollars interest thereon; the item $16\frac{76}{100}$ dollars for interest, & in his third annual settlement, and the item of $5\frac{10}{100}$ dollars for interest in his second annual settlement. Your complainant does not deny, but on the contrary says it is true that said administrator did pay Burnham and wife, and Sappington and wife, said several sums of money; but she insists that said county court of Callaway County had no power, authority, or jurisdiction, to allow or credit to said administrator any one of them in said settlements.

Your complainant states that each and every credit allowed to said administrator for commissions is false and fraudulent as follows, viz: $33\frac{20}{100}$ dollars, $66\frac{79}{100}$ dollars, $40\frac{31}{100}$ dollars, $26\frac{24}{100}$ dollars, $43\frac{58}{100}$ dollars, because no trustee who is unfaithful to his trust and guilty of bad faith can receive any compensation for services.

Your complainant further shows to the court that on the 24th day of

September, 1862, said Zadoc Hook, as the public administrator of Callaway County aforesaid, executed and delivered to the State of Missouri his bond whereby he, as principal, and William Carrington, Samuel Watson, Monroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John West, Martin Baker,
John Baker, Thomas J. Baker, William I. Bedsworth, Henry Lari-
9 more, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, and John A. Adkins, as his sureties, acknowledged themselves held and firmly bound, unto the State of Missouri, in the penal sum of one hundred and ninety thousand dollars, for payment of which well and truly to be made, they bound themselves, heirs, &c., jointly, and severally, and firmly, under their respective hands and seals, a copy of which bond is now here shown to the court, the original being on file in the office of the clerk of the said county court, by which it will appear that said bond was conditioned as follows: That whereas the county court of said county of Callaway did, on the 17th day of September, 1862, make an order requiring said Zadoc Hook, as public administrator of said county, to give additional bond and security, it was provided by said bond if said Zadoc Hook should well & faithfully discharge all the duties of his office as such public administrator, then said bond to be void, else remain in full force, and complainant saith that by means thereof the said principal & securities became, and were bound, and undertook, and agreed with the complainant that the said Hook should administer and settle up the estate of said Fielding Curtis, and distribute the same, after payment of debts, among the parties entitled thereto; that all debts and liabilities of said estate have long since been paid
off by said administrator; that although the said Zadoc Hook,
10 on the 24th of Sept., 1862, had in his hands all the effects and assetts of said estate, and the whole distributable share to which your complainant is entitled, he has not, and will not account for, nor pay the same to her, but on the contrary has been guilty of gross fraud and duplicity in respect thereto.

That owing to the want of communication between the place of the complainant's residence and Callaway County, Missouri, growing out of the late civil war, complainant was totally ignorant of the value of the estate of Fielding Curtis, deceased, as late as the 19th day of June, 1865; that about that time she received from said Hook the only information she possessed in reference thereto; that said Hook was kind enough to make a trip all the way to Culpepper County, Virginia, to communicate said information, which was as follows: that he, Hook, was the legal administrator of Fielding Curtis; that he had died in February, 1861; that the precise amount of her share in said estate could not then be ascertained owing to the uncertainty of collecting money, notes and evidences of debts due said estate; that he, Hook, out of his very great kindness for her was willing to pay to her on account of her interest in said estate the sum of five thousand dollars, which he, Hook, said was twelve hundred dollars over and above her share of all the available and
undoubted assetts of the estate including money & notes; that the
11 real actual value of her interest was about thirty-eight hundred dollars, and he, said Hook, proposed that inasmuch as he was so generous, if it should be that he could not collect for her share five thousand dollars of the assetts, she ought to refund as much of said sum of five thousand dollars as he should not realize above the thirty-eight hundred dollars; and said Hook also said that he would not hold her bound to refund to him longer than five years, for if he could not close

the outstanding claims in five years he would not claim the refunding bond.

Your complainant states she can neither read or write, and had no experience in transacting any legal business, and confidently relied on the representations of said Hook; that she received from him the said sum of five thousand dollars and made her mark on a paper which he requested her to sign, which paper is dated June 19th, 1865, and will be produced and shown to the court. Your complainant states that she is informed and believes that said paper was drawn by Hook's own attorney, whom he retained in Missouri to accompany him to Culpepper, Virginia, to assist him with legal advice in paying to your complainant 1,200 dollars more than he said was her due and prevent your complainant from taking advantage of him.

Complainant regrets to have to state that all the afosesaid representations of said Hook, touching the condition of said estate,
12 its value, and the amount of her share therein, were each and every one of them false and fraudulent. She says that said paper dated June 19th, 1865, was obtained from her by fraud, covin, and misrepresentation on part of said Hook and without consideration. That a short time afterwards said Hook represented to your complainant that although the five thousand dollars was more than her interest in said estate, yet if she would, in consideration of that sum already paid to her, assign to him any remaining interest of hers in said estate, he would give up her refunding bond. Impressed with the belief that said Hook was telling the truth, and regarding the proposition as generous on his part, your complainant, without any new consideration, signed her mark to a paper which said Hook presented her and which he told her was a transfer to him of any remaining interest she might have in said estate, and received back from him the aforesaid refunding bond dated June 19th, 1865. Your complainant states that said last-mentioned paper, which she signed when she got back said refunding bond, the date of which she is unable to give, was obtained from her by fraud, covin, and misrepresentation on the part of said Hook and without consideration.

Your complainant is informed and believes that he, said Hook, has paid to the distributees of said Fielding Curtis, deceased, includ-
13 ing the five thousand dollars paid to her, about thirty-five thousand dollars, and proposes to retain all the residue of said estate in his hands, not less than seventy or eighty thousand dollars, by means of the fraudulent devices aforesaid; that in November, 1861, said Hook, as the complainant is informed and believes and charges, paid to David M. Burnham, and Ann, his wife, 4,341 $\frac{65}{100}$ dollars, in part of the share of said Ann, whose distributable interest was only the half of one-eighth thereof.

Your complainant prays that said Zadoc Hook, William Carrington, Samuel Watson, Munroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John West, Martin Baker, John Baker, Thomas I. Baker, William I. Bedsworth, Henry Larimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Niel, and John A. Adkins, be made defendants to her bill; that a subpœna in chancery may go against them as such; that they may answer this bill, but without oath; that the transfer of complainant's interest in the estate of said decedant to the defendant Hook may be cancelled; that defendants shall account for all property and effects, principal and interest, which came to the hands of said Hook as administrator aforesaid; that all credits falsely and fraudulently allowed

14 as aforesaid, may be disallowed; that said settlements with the county court may be restated and corrected; that a decree may be made in favor of complainant for one-eighth part of *of* all the estate of said decedant remaining unaccounted for in the hands of said administrator; and that complainant may have general relief & ect.

GLOVER & SHEPLEY,
Solicitors for Ann Payne.

Whereupon, to wit, in vacation of the said circuit court of the United States for the districts of Missouri, on the twenty-fifth day of January, A. D. eighteen hundred *hundred* and sixty-seven, the following proceedings in the premises were had, to-wit:

ANN PAYNE, COMPLAINANT,
ag'st
ZADOC HOOK ET AL., DEFENDANTS. } In chancery.

Bill filed.

This day comes the complainant, by Messrs. Glover & Shepley, her solicitors, and files her bill in chancery against the said defendants in this cause, and on the motion of said solicitors it is ordered that a subpœna in chancery be issued in said cause, returnable to rules on the first Monday, the first day of April next.

Upon which the following summons issued, to wit:

Summons.

MISSOURI DISTRICT, *sct.:*

The President of the United States to Zadoc Hook, William Carrington, Samuel Watson, Monroe Sampson, Samuel A. Trimble, Isaac F.
15 Coons, John A. Comer, Alvon West, Thomas H. Beeding, John Baker, William J. Bedsworth, Henry Larimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, John A. Adkins, John West, Thomas J. Baker and Martin Baker, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the districts of Missouri, on the first Monday of April next, at the city of St. Louis, then and there to answer the bill of complaint of Ann Payne, a citizen of the State of Virginia, filed against you on the 25th day of January, 1867. Hereof fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, the 28th day of January, 1867.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[SEAL.] (Signed:) BEN. F. HICKMAN, *Clerk.*

[50c. U. S. rev. stamp.]

MEMO.:—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

(Signed:) BEN. F. HICKMAN, *Clerk.*

Upon which summons the marshal of said United States, for the western district of Missouri, made the following return, to wit:

Marshal's return on summons.

16 I certify that I executed the within writ by delivering a true copy of the bill and summons on the within named Zadock Hook, and by delivering a true copy of the within summons, and by reading a true copy of the said bill to the within named William Trimble and John West; and I further certify that I executed the within summons on the within Samuel A. Trimble, by delivering a true copy of the within summons at his usual place of abode to a white person of his family over the age of fifteen years, on the 4th day of March, 1867; and I further certify that I executed the within summons on the within named Isaac F. Coons, Alvon West, William J. Bedsworth, Martin Baker, Thomas J. Baker, John Baker, and Monroe Sampson, by delivering each of them a true copy of the within summons, and by reading to each of them a true copy of the within bill on the 5th day of March, 1867. I further certify that I executed the within summons on the within named Thomas H. Beeding, James H. Comer, Samuel Watson, William Carrington, Jeremiah N. B. Neil, Henry Larimore, and Joseph Fisher, by delivering to each of them a true copy of the within summons, and by reading to each of them a true copy of the within bill on the 6th day of March, 1867. I further certify that I executed the within summons on the within named William Blackwell, by delivering a true copy of the within summons at his usual place of abode to a white
17 person of his family over the age of fifteen years, on the 6th day of March, 1867. I further certify that I executed the within summons on the within named John A. Adkins by delivering a true copy of the within summons at his usual place of abode to a white person of his family over the age of fifteen years, on the 6th day of March, 1867. All done in Callaway County, and the State of Missouri, and in the Western district of Missouri.

THOMAS B. WALLACE,
U. S. Marshal for the Western District of Mo.
By PETER MEYERS,
U. S. Deputy Marshall.
THO. B. WALLACE,
U. S. Marshal Western District of Mo.

And at a regular stated term of the circuit court of the United States for the districts of Missouri, begun and held at the city of St. Louis, in said districts, on the first Monday, the first day of April, A. D. eighteen hundred and sixty-seven, the following further proceedings were had in this case on said last-mentioned day, to wit:

Demurrer to bill filed.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOC HOOK ET AL., DEFENDANTS. } In chancery.

This day come the defendant, Zadoc Hook, and all the parties legally served with process, by Thomas T. Gantt and William B. Napton, esquires, their solicitors, and file their demurrer to the bill of complainant heretofore filed in this cause.

Which demurrer is in the words and figures following, to wit:

18 *Demurrer to bill.*

In the United States circuit court for the districts of Missouri, April term, 1867. In chancery.

ANN PAYNE, COMPLAINANT,
vs.
ZADOK HOOK, WILLIAM COVINGTON, AND OTHERS, DEFENDANTS.

The demurrer of Zadok Hook, and all the parties to the bill of complaint in this cause:

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur in law to the said bill, and for cause of demurrer do show that the said complainant hath not by her said bill made such a case as entitles her in a court of equity to any discovery or relief from or against these defendants touching the matters contained in the said bill or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants do demur to the said bill and to all the matters & things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

WILLIAM B. NAPTON,
THOMAS T. GANTT,
Solicitors for Def'ts.

19 We certify that in our opinion the foregoing demurrer is well founded in point of law.

W. B. NAPTON,
THOS. T. GANTT,
Solicitors for Defendants.

Zadock Hook, defendant, being duly sworn, says on his oath that the aforegoing demurrer is not interposed for delay.

ZADOK HOOK.

Sworn to and subscribed before me, a notary public within & for Callaway County, Missouri, this eighth day of March, 1867.

[NOTARIAL SEAL.] JAS. C. RENSHAW,
Notary Public.

[5c. U. S. rev. stamp.]

And afterwards, on Friday, the fifth day of April, A. D. eighteen hundred and sixty-seven, the following further proceedings were had in this case, to wit:

Replication to demurrer filed.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOC HOOK ET AL., DEFENDANTS. } In chancery.

This day come the parties, by solicitors, and the said complainant, by solicitor, files her replication to the demurrer of said defendants to the bill of said complainant filed herein, on the first day of the present

term. And the questions of law arising upon the said demurrer were thereupon set for hearing instanter, by consent, and the same were then heard and submitted to the court, and the court, not being fully
20 advised in the premises, took time to consider of its decision thereon.

Which replication so filed on said last-mentioned day is in the words and figures following, to wit:

Replication to demurrer.

In cir. court U. States dists. Mo., Ap'l T., 1867.

ANN PAYNE
vs.
ZADOCK & OTHERS.

And now at this —— comes the plaintiff, and, for replication to the demurrer filed herein, says the bill of *the bill of* the complainant & the matters and things contained there are good and & sufficient, & of this she prays the judgment of the court.

GLOVER & SHEPLEY,
For Compl'nt.

And afterwards, on Saturday, the sixth day of April, A. D. eighteen hundred and sixty-seven, the following further proceedings were had in this case, to wit:

Demurrer to bill sustained.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOC HOOK ET AL., DEFENDANTS. } In chancery.

This day come again the parties, by solicitors, and the court having examined the questions of law arising upon the demurrer of said defendants to the bill of complainants heretofore filed herein, and being advised of and concerning the same, is of opinion that the law is
21 for the defendants, upon such demurrer, and in accordance with such opinion now orders that the said demurrer be and the same is hereby sustained. And thereupon, on motion of solicitors for complainant, it is ordered that said complainant have leave to amend her bill herein, on or before the first Monday of June next.

And afterwards, on Tuesday, the sixteenth day of April, A. D. eighteen hundred and sixty-seven, the following further proceedings were had in this case, to wit:

Continuance set aside.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOC HOOK ET AL., DEFENDANTS. } In chancery.

This day come the parties by their respective solicitors, and by consent it is ordered that the continuance entered in this cause on yesterday be and the same is hereby set aside.

Leave to amend withdrawn.—Compl't to abide decis'n of court on demurrer.

And on motion of solicitor for complainant it is further ordered that

the leave heretofore granted to the said complainant to amend the bill herein on or before the first Monday of June next, be and the same is hereby set aside. And the said complainant, by her solicitor, not asking further to amend the said bill filed by her herein, and saying that she will abide the decision of the court as rendered upon the questions of law arising upon the demurrer of the defendants heretofore sustained herein:

Bill dismissed.

It is, therefore, now finally ordered, adjudged and decreed that
22 in accordance with the decision of the court upon the demurrer filed herein by defendants to the bill of said complainant, that the said bill of complainant be and the same is hereby dismissed, and that the said complainant pay the costs of this suit, and that execution or a fee-bill be issued for such costs.

Appeal allowed.

And thereupon the said complainant, by her solicitor, prays an appeal in this cause from the decree rendered herein to the Supreme Court of the United States, which is allowed, and said appeal now ordered.

Bond filed & approved.

And the said complainant, by solicitor, thereupon presents to the court the bond of said appellant herein signed by Samuel T. Glover, as principal, and Thomas T. Gantt, as surety, which said bond is approved by the court.

Which said bond is in the words and figures following, to wit:

Bond of appellant.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOC HOOK ET AL., DEFENDANTS. } In chancery, and on appeal.

Know all men by these presents, that we, Samuel T. Glover, as principal, and Thomas T. Gantt, as surety, are held and firmly bound unto Zadoc Hook, William Carrington, Samuel Watson, Monroe Sampson, John West, Thomas J. Baker, Martin Baker, Samuel A. Trimble,
23 Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John Baker, William J. Bedsworth, Henry Larimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, and John A. Adkins, in the sum of five hundred dollars, for the payment of which well and truly to be made we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors and administrators firmly by these presents. Sealed with our seals and dated this 16th day of April, A. D. 1867.

Whereas the complainant in the above-entitled cause has prayed for and been allowed an appeal to the Supreme Court of the United States to reverse the decree rendered in cause by the circuit court of the

United States for the districts of Missouri, at the April term, A. D. 1867, of said circuit court:

Now, therefore, the condition of this obligation is such that if the above-named Ann Payne, her heirs, executors, and administrators, shall well and truly prosecute said appeal to effect, and answer all damages and costs if she shall fail to make good her plea, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

SAMUEL T. GLOVER. [SEAL.]
THO'S T. GANTT. [SEAL.]

Signed, sealed and acknowledged severally by said Samuel T. Glover and Thomas T. Gantt, before me this 16th day of April, A. D.
24 eighteen hundred and sixty-seven.

(Signed,) BEN. F. HICKMAN,
Clerk U. S. Circuit Court, Districts of Missouri.

And afterwards at the April term of said circuit court, A. D. eighteen hundred and sixty-nine, on Monday the 26th day of April in said last-mentioned year, the following further proceedings were had in this case, to wit:

ANN PAYNE, COMPLAINANT,
ag'st
ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by her solicitor, and files the opinion and mandate of the Supreme Court of the United States, reversing the decree entered in this case & remanding the same to this court for further proceedings in accordance with such opinion. It is, therefore, now ordered that said cause be again placed on the docket of this court.

And afterwards, on the 4th day of May, A. D. eighteen hundred and sixty-nine, the following motion was filed in this case, to wit:

Motion to consolidate.

In circuit court U. States, districts of Mo.

MARY GUINN
vs.
ZADOC HOOK & OTHERS. } April T., 1869.

SUSAN CURTIS
vs.
ZADOCK HOOK & OTHERS. } Do.

25 ANN PAYNE
vs.
ZADOC HOOK & OTHERS. } Do.

The plaintiffs move the court to consolidate the above causes in order that they may be tried together.

GLOVER & SHEPLEY,
For Plaintiffs.

And afterwards on Thursday, the thirteenth day of May, A. D. eighteen hundred and sixty-nine, the following further proceedings were had in this case, to wit:

Cases consolidated.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

SUSAN CURTIS, COMPLAINANT,
ag'st
ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

MARY GUINN, COMPLAINANT,
ag'st
ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

This day come the complainants by their solicitor, and on his motion, and for the purpose of avoiding unnecessary costs and delay, it is ordered that these cases be consolidated and heard and disposed of by the court at the same time.

And afterwards, to wit: In vacation of the said circuit court,
26 on the seventeenth day of July, A. D. eighteen hundred and sixty-nine, the following further proceedings were had in this cause, to wit:

Separate answer filed by def't Hook.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

This day comes the defendant, Zadock Hook, by his solicitor, and files his separate answer to the bill of complainant against him, with others in this cause filed.

Which answer so filed on said last-mentioned day is in the words and figures following, to wit:

Answer of Zadok Hook.

In the United States circuit court for Missouri.

ANN PAYNE, COMPLAINANT,
against
ZADOK HOOK, IMPLEADED WITH, &C. } In chancery.

The separate answer of Zadock Hook to the bill of complainant against him, with others in this cause filed.

This respondent, saving & reserving to himself, now and at all times hereafter, all & all manner of exception which can or may be had to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereunto or to so much thereof as he is by counsel advised that it is material for him to answer unto, saith: That true it is that one Fielding Curtis, late of Callaway County, Missouri, departed this life therein, in the month of Feb-
27 ruary, 1861, and that he died intestate & without issue, so far as is known to this respondent; and that this respondent did in the

month of February, 1861, and not in the month of Marc
the bill of complaint is alleged, take possession & charge
& chattels, moneys, credits, and effects of the said Fieldi
due form of law, and according, and in obedience to the
Callaway county court, and did proceed legally and in
manner, with the assistance of two witnesses, who were res
disinterested house-holders of the vicinity of the last abod
Fielding Curtis, and of no kin to this respondent, who accon
respondent in opening & examining the papers and mo
deceased, and in making an inventory thereof, to collect,
describe, and make an accurate inventory of the money, prop
chattels, & effects, which were of the said Fielding Curtis.
make and return, with the assistance of said witnesses, a
perfect, and accurate inventory of all the goods & chatte
credits, & effects, which were of the said Fielding Curtis, a
did file the same in the county court of Callaway County,
February 25, 1861.

This respondent further answering, says that the said inve
and makes known the whole of the estate, assets, moneys, c
effects of the said Fielding Curtis, so far forth as the same c
hands of this respondent, or so far forth as he has any
28 thereof.

And this respondent further answering, says that the
in said bill of complaint contained that there was in, or c
hands of this respondent, more than fifteen thousand dollar
belonging to the said Fielding Curtis' estate, consisting of gol
bonds, notes, & obligations for the payment of money, the property
said Fielding Curtis in his lifetime and at the time of his death, which
came to the hands of this respondent as administrator of said Fielding
Curtis, and which this respondent failed to inventory or account for in
his administration of said estate, is utterly and grossly false and untrue.

And this respondent further answering, says that the statement in
said bill of complaint contained that this respondent in his first annual
settlement made by respondent as administrator of said Fielding Curtis,
failed and refused fraudulently to account for or charge himself with
twenty thousand dollars belonging to the said Fielding Curtis' estate,
which respondent had received for interest on money of said estate, and
for which this respondent never accounted, is utterly & grossly false &
untrue.

And further answering, respondent says that the statement in said
bill of complaint contained that this respondent in his second annual
settlement as administrator of the estate of the said Fielding Curtis,
failed to account for or charge himself with another large sum of
29 money, to wit: twenty thousand dollars belonging to said de-
cedant's estate, which respondent had received as interest for
money of said estate, which has ever since remained in the hands of
this respondent unaccounted for, is utterly and grossly false & untrue.

And further answering, this respondent says that the statement in
said bill of complaint contained that in his third annual settlement as
administrator of said Fielding Curtis, this respondent failed & refused
to account for and charge himself with another sum of twenty thousand
dollars belonging to the estate of said Fielding Curtis and received by
this respondent as interest of money belonging to said estate, is utterly
& grossly false & untrue.

And further answering, this respondent says that the statement in said
bill of complaint contained that this respondent in his fourth annual

settlement as administrator of said estate of Fielding Curtis, failed & refused to charge himself with or account for the further sum of twenty thousand dollars belonging to said estate, and by this respondent received as interest of money thereto belonging, and that the same remains in the hands of this respondent unaccounted for, is grossly and utterly false & untrue.

This respondent further answering saith that it is not true that all of the bonds & obligations to his hands coming, as administrator of said Fielding Curtis, bore interest at the rate of ten per cent., as in said bill of complaint is alleged.

30 And further answering, this respondent says that it is not true that he has collected or received the amount of each and all of said bonds & obligations as in said bill of complaint is alleged. This respondent says that on many of said bonds & obligations only six per cent. interest was payable, and that many of said bonds and obligations on the said inventory mentioned and described proved to be uncollectable, and have been never received by this respondent up to this hour. And said respondent says that the amount of interest by him received on the said bonds and obligations fully and plainly appears by the accounts by him filed at his annual settlements, and that no other or further interest 26 was by him received thereon, and that the last of the desperate debts of the said estate is herewith presently shown, the amount thereof being to six thousand nine hundred dollars, ($6,900.)

This respondent further answering, says that the statement in said bill of complaint contained, that he used the funds of the estate in his hands remaining and being for his own private advantage and emolument, and for the purpose of speculation or gain to himself, or that this respondent lent the same at high or usurious rates of interest, is utterly and grossly false and untrue. And this respondent says that his accounts by him filed as administrator of said Fielding Curtis, and passed and approved by the county court of Callaway County, in the years 1862, 1863, 1864, & 1865, show the true and correct statement, con- 31 dition, and amount of the money of said estate of said Fielding Curtis in and to the hands of this respondent coming, being, and remaining, both principal and interest.

Further answering, respondent denies that the several charges by him made against himself in his said annual settlements of interest at the rate of six per cent. on the money of the estate of the said Fielding Curtis in his hands remaining are false and fraudulent, or that any one of said charges is false and fraudulent as in said bill of complaint is alleged. This respondent avers that the said rate of interest was fixed and determined by the county court of Callaway County, upon a full, open, and complete manifestation and showing by this respondent to said court of all and singular, the circumstances, conditions, and difficulties attending the administration of the said estate of said Fielding Curtis.

Further answering, this respondent says that the statement in the said bill of complaint contained, that the following items of credit claimed by this respondent, and allowed by the Callaway circuit court, in the several settlements by said respondent, made as administrator of said Fielding Curtis, that is to say, the sum of $4,341 $\frac{65}{100}$ paid to David M. Burnham & wife, and the sum of $397 $\frac{69}{100}$ interest thereon; the sum of $1,214 $\frac{47}{100}$ paid to W'm J. Sappington & wife, and the sum of $83 $\frac{13}{100}$ interest thereon; the sum of $1,100 paid to W'm J. Sappington & wife, and the sum $10 $\frac{08}{100}$ interest thereon; the sum of $180 $\frac{76}{100}$ paid to W'm J. Sappington & wife, and the

32 sum of $5 50 interest thereon; the sum of $116 08 paid to W'm J. Sappington & wife, and the sum of $5 $\frac{25}{100}$ interest thereon; the sum of $57 $\frac{26}{100}$ paid to W'm J. Sappington & wife, and $3 15 interest thereon; the sum of $261 88 paid to W'm J. Sappington & wife, and the sum of $37 $\frac{30}{100}$ interest thereon; and the sum of $16 $\frac{76}{100}$ and $5 $\frac{10}{100}$ interest thereon, were fraudulent and illegal, is wholly & grossly false and untrue.

This respondent further answering, says that the statement in said bill of complaint contained, that each and every sum allowed to this respondent as commissions, said sums being $33 20, $60 79, $40 31, $26 24 and $43 $\frac{28}{100}$, is false and fraudulent, is wholly & grossly untrue & false.

Further answering, this respondent saith that the statement in said bill of complaint contained that until the 12 June, 1865, the complainant was ignorant & uninformed of the nature, character and value of the estate of the said Fielding Curtis in the hands of respondent being, is utterly and grossly false & untrue.

Further answering, this respondent says that the statement in said bill of complaint contained, that the only information possessed by complainant touching the nature, amount & value of said estate, was then given to her by this respondent, is utterly and grossly false & untrue.

Further answering, this respondent denies that he practiced any fraud or made any misrepresentation to the complainant in the
33 month of June, 1865, or at any other time, touching the amount, character, or value of said estate. And this respondent avers that in the month of June, 1865, he gave to said complainant, as he had in the year 1861 previously given to her, all the information touching the value and condition of the said estate which this respondent himself possessed, as will presently hereinafter be more particularly and in detail shown. And this respondent denies that the paper by said complainant signed, relinquishing and transferring to this respondent all her share of the estate of the said Fielding Curtis, in consideration of the sum of five thousand dollars, was obtained from complainant by fraud, covin or misrepresentation.

Further answering, this respondent says that in the year 1861 the said Fielding Curtis died in Callaway County, Mo., intestate and without issue, and that this respondent, who was then public administrator of Callaway County, Missouri, was by the county court of said county ordered and directed to take charge of the effects, credits, money, and property which were of the said Fielding Curtis, in said Callaway County, whereupon this respondent proceeded in the discharge of his duties as such administrator, and in obedience to said order, to make, with the assistance and in the presence of two credible and respectable householders of the vicinity of the last abode of the deceased, a full, true, & perfect inventory of all the goods & chattels, moneys, credits, &
34 effects which were of the said Fielding Curtis, and that he returned said inventory to the county court of said Callaway County, which had full & complete jurisdiction thereof; that at the time when said inventory was made & returned, to wit, in the month of February, 1861, the affairs of all of the said county of Callaway were violently disordered by the civil commotions then beginning to be felt throughout the whole State of Missouri, and great uncertainty prevailed respecting the solvency of persons who, up to that time, had been considered persons of undoubted wealth; property of all kinds was greatly depreciated, and the value of all securities for the payment of money in

future was much impaired; that this respondent promptly put himself in communication with those of the next kin of the said Fielding Curtis, who resided in the State of Virginia, and selecting one of these, to wit, Abraham Curtis, a brother of the deceased, residing in the county of Culpepper, this respondent gave to said Abraham Curtis all the information respecting the estate of the said Fielding Curtis which he, this respondent, possessed, and requested the said Abraham Curtis to communicate the same to the other members of the family and kin of the said Fielding Curtis, and the said Abraham Curtis, in the month of April, 1861, did communicate said information to the other distributees of the estate of the said Fielding Curtis, and particularly to the said complainant; that thereafter, in consequence of the civil war and
35 the interruption of intercourse therefrom resulting, it was impossible to give any further information to the said complainant or her co-distributees, residing in Virginia, until the termination of hostilities, which occurred in the spring of 1865; and as soon thereafter as he conveniently could, this respondent, having filed in the county court of Callaway County, Missouri, his fourth annual settlement of the estate of the said Fielding Curtis, proceeded to Virginia and collected together the complainant and others who were with her interested in the estate of the said Fielding Curtis, and laid before them the condition of the said estate, with a full and true statement of everything he had done with respect thereof since it came to his hands, which statement disclosed to them, the said complainant and others, all that had occurred in the course of administration, and was, in substance, as follows: That is to say, that of the estate of Fielding Curtis coming to the hands of this respondent as administrator thereof, part consisted of negroes who had been already hired out for the year 1861, and the notes for their hire were included in the inventory filed by respondent, and charged against him therein; that the value of these negroes was in a very short time thereafter utterly destroyed by the civil war which spread over the State of Missouri, and that the only sums ever received by this respondent, as the hire of the said negroes, stands duly and correctly
36 charged against him in his accounts regularly presented to and allowed by the Callaway County court; that of the bonds and obligations for the payment of money, which constituted the principal part of the estate of the said Fielding Curtis, scarcely any portion was collected or paid in the year 1861; that with no considerable exception the same was paid in the paper of the United States, commonly called legal-tender notes, which this respondent was compelled, in common with all others, to receive in payment of debts; that the same rapidly depreciated in value; that it became unsafe to keep money or anything valuable in Callaway County in the years 1862, 1863, 1864, & the first half of 1865; that in order to secure the property of the estate of Fielding Curtis from loss and destruction this respondent removed the same to St. Louis, and there kept the same; that in the year 1864, becoming alarmed at the rapid & appalling depreciation of the paper of the United States, this respondent invested the sum of twenty thousand dollars thereof, received by him principally in the year 1864, in payment of the bonds and obligations for the payment of money belonging to the estate of said Fielding Curtis, and being in the hands of this respondent, as his administrator, in gold; that from and by reason of this investment this respondent sustained a loss of more than eighteen thousand dollars, which loss was occasioned entirely by the anxiety of this respondent to
37 save the property of said estate from loss and ruin; that it was impossible to make any safe or satisfactory investment or dispo-

sition of the money of said estate in the hands of this respondent; that he applied to the county court of Callaway County for instructions as to its disposition, and also for authority to lend the same, but that the court refused to give any such instructions or authority, and remitted this respondent entirely to his own discretion & responsibility in the premises; that all these matters & things being made known to the court, and being seen & considered when passing on the accounts of this respondents, undoubtedly influenced the action of the court in fixing the sum to be charged against this respondent as interest for and on the estate of the said Fielding Curtis in his hands remaining, and not invested; that in respect of a considerable portion of the bonds & obligations for the payment of money to the estate of the said Fielding Curtis belonging, the same were uncollected in the month of June, in the year 1865, and a large sum thereof, presently to be more particularly stated, remains unpaid and uncollected to this day; that this respondent had previously paid & delivered to D. W. Burnham & wife, and to W'm J. Sappington & wife, who were distributees of said estate, parcel of said bonds & obligations, on account of their respective distributive shares thereof, which said parcel of said bonds & obli-
38 gations is the same that appears charged as paid to said Burnham & wife & Sappington & wife, respectively, in the accounts of this respondent, and which is in said bill of complaint falsely alleged to be fraudulently so charged, and respondent says that the fact of such payment being to them made in said bonds & obligations, and not in money, is the reason why in the said accounts this respondent, who had been charged with the interest accrued on said bonds & obligations, claims credit for the said interest; that the said Burnham & Sappington received the said bonds and obligations as part of their respective distributive shares of said estate of the said Fielding Curtis, but inasmuch as it was uncertain whether the same would be wholly collected, or whether other bonds or obligations to the said estate belonging and remaining in the hands of the said respondent might not prove uncollectible, the said Burnham & Sappington executed to this respondent refunding bonds, conditioned to make good to him, said respondent, any over-payment which might appear upon final settlement to have been thus made to them, or either of them; that in June, 1865, when respondent visited Culpepper County, Virginia, and saw the said complainant, (with whom, up to that time, he had had no direct communication,) she, the said complainant, was then not only informed of all the facts aforesaid,
39 and of the details of the same, as shown by the accounts of this respondent in the Callaway County court filed, and by the same approved & passed, but this respondent found that said complainant had been informed by Abraham Curtis of the information to said Abraham Curtis by this respondent given in the spring of 1861, in respect of the said estate of Fielding Curtis; and that in fact the said complainant in 1865 was informed by this respondent, before the making of the instrument of transfer & release in the said bill of complaint set forth, of every matter and thing which could enable her to act understandingly in the premises.

And respondent further answering, says that though he believes it to be true that the said complainant does not know how to read and write, yet that she is an uncommonly shrewd and knowing old lady, and that she was, moreover, represented and assisted, during all the negotiations & conferences that ensued, not only by Mary Guinn and Susan Curtis, but by her son, John J. Payne, and her connection, Peter J. Morris, both of whom are persons of education and capacity, and both of whom

perfectly understood the whole nature, merits, and circumstances of the transaction, and the proposal by the said respondent made to the said complainant, as well as to her co-distributees, then & there present, in respect thereof; and this respondent says that the said complain-
40 ant then and there, fully understanding and knowing the whole truth of the said administration, and having her eyes fully open to all the features thereof, and being thereto advised by those whom she employed and induced to represent her in & about said negotiation, did agree to secure from this respondent the sum of five thousand dollars in cash, and in consideration thereof to release him from all accountability to her, as one of the distributees of the estate of the said Fielding Curtis, the said Peter J. Norris remarking at the time, and in the full hearing of the complainant, that if affairs turned out well the said respondent would gain ten thousand dollars or more by the transaction that day entered into and closed between this respondent and the said complainant and the other co-distributees, and that it was but just that the said respondent should make some such gain to compensate for the losses he had sustained in the course of said administration.

And further answering, this respondent says that, at the time when the said conferences and negotiations were had, this respondent had filed in the Callaway County court four several annual accounts or settlements, with the vouchers accompanying the same, all of which had been by the said court fully and competently considered and approved, the last of said settlements having been filed in the month of May, 1865, of all of which the said complainant had notice. And it was
41 made known to the said complainant that this respondent did not claim as a legal right to be exonerated from the loss by him sustained from purchasing gold with United States notes, to the estate of Fielding Curtis, belonging and in the hands of this respondent, as administrator, which paper he had been compelled by the military & civil government of Missouri to receive at par in satisfaction of the said bonds and obligations for the payment of money mentioned & described in the inventory of the said estate, but he did claim, as he was in equity entitled to claim, that he ought to be treated liberally in respect of a loss by him incurred in good faith in the attempt to save the property of said estate from total destruction, and this last-mentioned claim was fully considered & recognized by the said complainant & her advisers aforesaid. It was also shown to the said complainant that certain sums of money to said estate belonging, being in the hands of the said respondent in United States legal-tender notes, he the said respondent, fearful of the utter depreciation of said notes, had applied to the Callaway County court for authority to lend out the same on such personal security as might be by the said court approved. But the said court had wholly refused to give any such permission or authority, and had remitted the respondent to his own unaided judgment and responsibility in respect thereof. Whereupon, this respondent seeing the continued and increasing depreciation of said funds and United
42 States legal-tender notes, had of his own judgment and discretion lent out certain sums of money to said estate belonging, and received therefor the securities of the borrowers, which, in June, 1865, remained uncollected & unpaid. And after all such disclosures and statements, it was by this respondent proposed to pay to the said complainant, in cash, the sum of five thousand dollars, (and to each of her two co-distributees the like sum of five thousand dollars,) and that in consideration thereof the said complainant should release and transfer to this respondent all her share, right, claim, and demand of, in, & to the

said estate of Fielding Curtis, and discharge him, the said respondent, from all liability and accountability therefor. And the said complainant, after duly considering the said proposal, and being advised of all the matters, things, & facts attending the same, and being by her chosen counsellors, co-distributees, and friends urged to accept the said proposal, did, in consideration that her co-distributees would accept the like proposal for themselves, and that the said respondent would pay to them and each of them, including the said complainant, the said sum of five thousand dollars, did agree to accept the said proposal for herself. And thereupon the said co-distributees immediately and in like manner accepted the same proposal, each on her own account, and the said respondent on the spot, assented to the same and performed
43 the condition there & then by paying to the said complainant and each of her said co-distributees the sum of five thousand dollars, and each of the said co-distributees, and also the said complainant, executed to the respondent, then & there, each for herself, an instrument of release and transfer releasing & transferring to this respondent all the share, interest, and claim of the releasor and transferrer in, of, & to the estate of the said Fielding Curtis, on consideration of the payment to the releasor & transferrer by said respondent of the said sum of five thousand dollars, and this respondent then and there paid to each one of said distributees the sum of five thousand dollars. And this respondent brings here and shows to the court the said instrument of writing by the said complainant, executed as aforesaid, in the presence of John J. Payne and Peter J. Morris, subscribing witnesses, and prays that the same be taken as part of his answer.

And respondent further answering, denies that the allegation in said bill of complaint contained, that the complainant signed the said instrument of release & transfer by reason of fraud, covin, & misrepresentation practiced on her by this respondent, or that any matter or thing stated and represented to her by this respondent in respect thereof, was false or untrue.

And this respondent further answering, produces to the court here his several settlements made in the Callaway County court, of the
44 estate of the said Fielding Curtis, deceased, the last thereof being the fourth settlement made on the 19th May, 1865; and respondent shows to the court here that in said last-named settlement he is not credited with divers large sums of money for which he would be entitled to credit upon final settlement, that is to say, to commissions upon whole amount of the estate of said Fielding Curtis by this respondent received and administered, amounting to the sum of thirty-two hundred and fifty dollars; and the further sum of seventeen hundred & sixty-five dollars, being the amount of taxes paid on account of said estate and legal expenses, not heretofore credited to this respondent.

And this respondent further shows that, from the balance upon said last-named settlement appearing against himself should be deducted the sum of *of* six thousand nine hundred dollars, being uncollectible and desperate debts included in the said inventory and charged against the said respondent in said last-named settlement, the particulars of which sum of $6,900 appear in schedule herewith filed & marked Exhibit ( ); and respondent has not in any account by him filed claimed credit for the United States taxes to be paid upon the final settlement and distribution of the said estate of Fielding Curtis; and for these taxes when paid this respondent will claim that he is legally & equitably en-
45 titled to allowance, the amount thereof, as far as respondent can now estimate the same, being about fifteen hundred dollars.

And this respondent denies all and all manner of fraud, misapprehension, conspiracy, and combination, against him in said bill of complaint alleged, without this, that any matter or thing in said bill of complaint alleged & material to be answered unto by this respondent, and not herein sufficiently traversed or denied, confessed and avoided, is true.

All which this respondent is ready to aver & prove as this court shall direct, and thereupon this respondent prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

(Signed) ZADOK HOOK.

With whom is THOS. T. GANTT,
W. B. NAPTON,
Solicitors for defendant.

UNITED STATES OF AMERICA,
Districts of Missouri:

Personally, on this seventeenth day of July, in the year eighteen hundred and sixty-nine, before me, clerk of the United States circuit court for the districts of Missouri, appeared Zadok Hook, the respondent in this cause, who, being duly sworn, says, on his oath, that the matters and things in the aforegoing answer, signed by him, stated & set forth, so far forth as the same are therein stated as of his own knowledge, he knows to be true, and so far forth as the same are stated as being derived from the information of others, he believes them to be true.

In testimony whereof, I have hereto set my hand and affixed
46 the seal of said court at office in the city of St. Louis, on the day and year aforesaid.

(Signed) BEN. F. HICKMAN,
Clerk of said court.

And afterwards, to wit, in vacation of the said court, on the twenty-fourth day of July, in the year of our Lord eighteen hundred and sixty-nine, the following further proceedings were had in this cause, to wit:

Schedule of bad debts filed.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

This day comes the defendant, Zadock Hook, by his solicitor, and files a schedule of bad debts referred to in the answer of said defendant to the bill of complainant herein against him.

Which schedule of bad debts is in the words and figures following, to wit:

Schedule of bad debts.

ANN PAYNE, MARY GWINN, AND SUSAN CURTIS
vs.
ZADOK HOOK & OTHERS.

Schedule of bad or desperate debts referred to in the answer of defendants, and amounting to $6,000 viz:

This sum, owning by				Bryan, Benton, & Bell	$4,000
"	"	"	"	Warren Woodson	$1,200
"	"	"	"	Nathan Kouns	700
"	"	"	"	Houston	1,000
					$6,900

47 And also in vacation of said circuit court on said last-mentioned day, the following further proceedings were had in this cause, to wit:

Agreement of counsel filed.

ANN PAYNE, COMPLAINANT,
agst
ZADOK HOOK ET AL., DEFENDANTS. } In chancery.

This day come the parties by their solicitors, and file an agreement in writing, signed by said solicitors, and consenting that the answer heretofore filed by Zadock Hook may stand as the answer of all defendants, and apply to the three cases now consolidated, for the purpose of being heard and disposed of at the same time.

Which agreement is in the words and figures following, to wit:

Agreement of counsel.

U. S. circuit court for Mo. In the United States circuit court Three suits consolidated into one. In equity.

ANN PAYNE, MARY GWINN, AND SUSAN CURTIS,
Complainants,
vs.
ZADOK HOOK & OTHERS, DEFENDANTS.

In this case, the answer filed by Zadock Hook may stand as the answer of all the defendants. This answer is entitled in the case of Ann Payne vs. Zadock Hook et al., but is intended to apply to all the cases which are similar.

July 17, 69.

(Signed) GLOVER & SHEPLEY, *for Plaintiffs.*
(Signed) THOS. T. GANTT,
With W'M B. NAPTON, *P. D.*

48 And afterwards, to wit, in vacation of said circuit court, on the twenty-eighth day of July, A. D. eighteen hundred and sixty-nine, the following further proceedings were had in this cause:

Joint answer filed.

ANN PAYNE, COMPLAINANT,
agst
ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

This day come the defendants, by their solicitor, and file their joint answer to the bill of complainant herein against them.

Which answer is in the words and figures following, to wit:

Answer of all defendants.

ANN PAYNE, SUSAN CURTIS, AND MARY GWINN, complainants,
against
ZADOK HOOK, WILLIAM CARRINGTON, SAMUEL Watson, Monroe Sampson, Samuel A. Trimble, Isaac T. Coons, Jn'o A. Comer, John West, Thomas H. Beeding, Thomas J. Baker, Martin Baker, John Baker, William Bedsworth, Henry Larimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, & John A. Adkins, defendants. } In chancery.

In the United States circuit court for the districts of Missouri, sitting as a court of equity. Three cases consolidated.

The answer of the aforesaid defendants to the bill of complainant against them in this cause exhibited.

These defendants, for answer to so much of the said bills of complaint as they are advised by counsel that it is material for them to answer unto, say that they adopt the answer of the said Zadok Hook,
49 one of their number, made in the case of Ann Payne vs. Zadok Hook, impleaded, &c., which is one of the cases which were consolidated into this cause, as the true and detailed explanation and narrative of the matters attending the administration of the estate of the said Fielding Curtis, deceased, and as the answer to the charges in the said bills of complaint made against the said Zadok Hook, the narrative of the facts and matters stated in said answer being only so far modified as to make the same applicable to the charges made in the separate cases of Susan Curtis vs. Z. Hook & others, and Mary Gwinn vs. Zadok Hook & others, mutatis mutandis, and they refer to the said answer of the said Zadock Hook so filed, and for greater certaintity pray that it be taken and considered as incorporated herein. And they humbly pray to be hence discharged with their reasonable costs in this behalf most wrongfully sustained.

(Signed) ZADOK HOOK.

W. B. NAPTON, with THOMAS T. GANTT,

Solicitors for defendants.

Personally on this 28 July, 1869, before me the subscriber, clerk of the United States circuit court for the districts of Missouri, appeared Zadok Hook, one of the defendants in the above-entitled cause, and made oath & said that the matters and things in the aforegoing answer stated and contained are, as he verily believes, true. That so
50 far forth as the said matters and things are therein alleged as of the personal knowledge of affiant he knows them to be true, and so far as the same are therein alleged to be known by information derived from others, he believes them to be true.

(Signed) ZADOK HOOK.

Sworn and subscribed before me this 28 July, 1869, at St. Louis, Missouri.

(Signed) BEN. F. HICKMAN,
Clerk U. S. C. C., Mo. Dis.

And also in vacation of said circuit court, on said 28th day of July, in said last-mentioned year, the following further proceedings were had in this cause, to wit:

Replication to answer of defendants filed.

ANN PAYNE, COMPLAINANT, *ag'st* ZADOCK HOOK ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by her solicitor, and files her replication to the answer of the said defendants to the bill of complainant heretofore filed herein; which replication is in the words and figures following, to wit:

Replication to answer of defendants.

ANN PAYNE, SUSAN CURTIS, & MARY GUINN, complainants, *vs.* ZADOC HOOK & OTHERS, DEF'D'TS. } In ch'y.

In circuit court of the United States for the districts of Mo.

And now at this day come the complainants in said cause and for replication to the answer of the said defendants (all of whom
51 adopt the separate answer of the said defendant, Zadock Hook) the said complainants say that the said several matters, averments, and things in their consolidated bills herein set forth are true in fact as by them set forth, and they will maintain and prove the same, and that the several matters, averments and things in the answers of said defendants in denial or avoidance of the said complainants' bill are not true or just, and this they will maintain and prove, and the said complainants' prayer in their original bill & as in duty bound, &c.

(Signed) GLOVER & SHEPLEY,
For Complainants.

And afterwards at the October term of said circuit court begun and held at the city of St. Louis, in said districts of Missouri, on the first Monday, the fourth day of October, eighteen hundred and sixty-nine, the following further proceedings were had in this cause on Wednesday the twelfth day of January, A. D. eighteen hundred and seventy, to wit:

Interlocutory decree.

ANN PAYNE, COMPLAINANT, *ag'st* ZADOCK HOOK ET AL., DEFENDANTS. } In chancery—consolidated.

SUSAN CURTIS, COMPLAINANT, *ag'st* ZADOCK HOOK ET AL., DEFENDANTS. } In chancery—consolidated.

MARY GUINN, COMPLAINANT, *ag'st* ZADOCK HOOK ET AL., DEFENDANTS. } In chancery—consolidated.

52 These causes as consolidated came on to be heard on bills, answers,

and proofs at this term, and on the 12th day of January, 1870, and were argued by counsel; and thereupon, and upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the several transfers, relinquishments, and releases of the complainants to the defendant, Zadock Hook, be and the same are hereby declared null and void and of no effect whatever except so far as the same show the amounts of money received from the defendant, Zadock Hook, by the said complainants, which amounts so received are to be treated as so much money paid to the parties receiving the same on account of their distributable shares of the estate of Fielding Curtis, deceased.

It is further ordered that Alexander Martin, esquire, be, and he is hereby, appointed a master pro hac vice to fully enquire into and state the accounts of the said Zadock Hook, administrator of Fielding Curtis, deceased, on the following basis:

He shall take the whole amount of the gold, silver, Missouri bank notes, and promissory notes, mentioned in the inventory, and add thereto the amount of the sale bill, and hires of slaves, and to the aggregate thereof he shall add an amount equal to ten per cent. per annum on the whole amount of said promissory notes in said
53 inventory from the day of filing the inventory up to the day of the first settlement of said administrator with the Callaway County court, and from the amount thus ascertained he shall deduct the whole amount of credits allowed said administrator on said settlement for payments made by him other than payments made to any distributee on account of a distributable share in said estate; on the balance thus ascertained the master shall again calculate and add interest at the rate of ten per cent. per annum to the next settlement, and from the aggregate so found deduct the credits allowed in said settlement by the said county court other than those for payments to any distributee of said estate on account of a distributable share, and will so carry forward the account from year to year down to April 1, 1870, the date of his report, making annual rests and adding ten per cent. interest per annum to the last balance, and deducting therefrom any payments since the date thereof made by the administrator and allowed in his settlements, other than payments made to any distributee on account of a distributable share.

The master is also instructed to inquire into and state an account as to any item or items charged against said administrator, Zadock Hook, in said inventory and claimed by him not to have been collected and not collectable, and to exhibit an account in reference thereto
54 showing computations of interest thereon at 10 per cent. per annum, from year to year, making annual rests, as above directed, down to the date of his report.

The master is further instructed to enquire into and state an account showing what interest was actually received by the said administrator on claims stated in the inventory to have borne six per cent. interest, or on those in respect to which the note of interest was not stated in the inventory or not known, and report the several amounts of interest so found by him to have been collected, bringing this account in the same way down to the day of his report, and showing the result of such interest, if such interest was collected at the rate of ten per cent., and also the result, provided the interest collected on said items was only six per cent.

The master will also enquire into and report what claims, if any, have been preferred or allowed against the estate of Fielding Curtis, and re-

main unpaid or undetermined, and what costs and fees are due and unpaid to any officer or other person than a distributee of said estate, and what commissions are due to said administrator under the laws of Missouri.

The master having made out the separate statements and accounts as aforesaid, will, apart from these, exhibit to the court a balance
55 sheet showing the liability of said Hook to the estate of Fielding Curtis, without including therein his payments to the several distributees; and will also exhibit an account showing the payments by said Hook, administrator, to the several distributees of said estate, calculating interest on the said payments with annual rests as above, and showing what amount remains due to each of said distributees of said estate.

It appearing to the court by affidavit of S. T. Glover, this day filed, that there are other persons who are interested in this cause as distributees of Fielding Curtis, deceased, besides the complainants, the master is directed to enquire and report who are the other distributees of said estate, and what payments have been made to them, if any, and what is due to them respectively at the date of his report.

The master is further directed to reduce all testimony taken before him to writing, the same to accompany his report.

The said master is hereby ordered to make his report to this court, in manner as herein required, on the first Monday of April, 1870.

And the said affidavit of S. T. Glover, above referred to, is in the words and figures following, to wit:

Affidavit of S. T. Glover.

ANN PAYNE ET AL.
vs.
ZADOCK HOOK ET AL.

56 In circuit court U. States in ch'y, dist's Mo., Oct. T., 1869,

The above cause having been heard so far as to reach an interlocutory decree setting aside the release and transfers made by the complainant to Zadock Hook, adm'r of Fielding Curtis, dec'd, the petition of Henry B. Curtis, Abram C. Curtis, Abiah Guinn, Tandy W. Guinn, Matilda Collins, Wesley Hill and Elizabeth Hill his wife, Henry Gambs, adm'r of Abraham Curtis, dec'd, Henry Gambs, adm'r of John I. Curtis, dec'd, Henry Gambs, adm'r of Phares Guinn, dec'd, is here presented to the court, showing that your petitioners pray to have the benefit of said interlocutory order and permission to appear as claimants to their distributive shares of the said estate of Fielding Curtis before the commissioner, who shall be directed to take an account and evidence in the further proceedings herein, and to prefer such proofs as they deem fit to establish their right thereto.

Your petitioners state that the bill of the said plaintiffs is true wherever it sets forth the said adm'r of Fielding Curtis took possession of his estate, which was a very large amount, and gave bond with sureties to lawfully administer the same, and collected the debts and used and employed the money of said estate for his own benefit, and realized large sums of interest thereon, and never has accounted with said complainants fully, and defrauded them.

57 Your petitioners further state, the said Hook has never accounted with them or either of them fully, but has defrauded and

and ceived them, and converted to his own use the money due to your w petitioners.

Your petitioners say that the said Fielding Curtis, dec'd, had three brothers only, namely: William, Abraham, and Elijah. The said William dec'd in the lifetime of his brother Fielding, leaving only two children, his lawful heirs, to wit: Ann C. Burnham, wife of David Burnham, now citizen of Missouri, and Virginia W. Sappington, wife of William J. Sappington, also now citizen of Mo. That Abraham Curtis, of Va., died since the death of his brother Fielding, and said Henry Gambs, of St. Louis County, Missouri, is his adm'r. That said Elijah, dec'd, died in the lifetime of his brother Fielding, and left the following children as his lawful heirs, viz: Abram C. Curtis, now a citizen of Va., Henry B. Curtis, now a citizen of Va., Benjamin W. Curtis, now a citizen of Va., and John J. Curtis, late a citizen of Va., and that said John I. Curtis is dead, and Henry Gambs, of St. Louis Co., Mo., is his adm'r. That said Fielding Curtis had five sisters, namely, Mary Guinn, Anne Payne, and Susan Curtis, complainants in the above suit; also a sister named Elizabeth Guinn, who died in the lifetime of her brother Fielding,
58 and left the following children her lawful heirs, viz: Abraham Guinn, Tandy W. Guinn, Matilda Collins, a widow, Elizabeth Hill, wife of Wesley Hill, (said Abiah, Tandy, Matilda, and Elizabeth, and Wesley, her husband, all now citizens of Va.,) Alfred Guinn, citizen at the time of the State of Tennessee, Milton Guinn, now citizen of West Va., and Phares Guinn, late a citizen of Va., but now dead, the said Henry Gambs of St. Louis County, Missouri, being his administrator. That the other sister of said Fielding was Sarah Wilhoyt, late a citizen of the State of Va., who died in the lifetime of her brother Fielding, leaving children whose names are not fully known to your petitioners.

HY. B. CURTIS,
A. C. CURTIS,
ABIAH GUINN,
MATILDA COLLINS,
WESLEY HILL, and
ELIZABETH HILL, *his wife*,
HY. GAMBS,
Adm'r of Abraham Curtis, dec'd.
HY. GAMBS,
Adm'r John J. Curtis, dec'd.
HY. GAMBS,
Adm'r Phares Guinn, dec'd.
By GLOVER & SHEPLEY,
Their Solicitors.

Sam'l T. Glover on his oath says that he has been retained as solicitor for the parties above named, to represent them in that behalf, and he is informed and believes the above statements of said petitions are true as made.

(Signed) S. T. GLOVER.

Sworn to before me this 5 day of Nov'r, 1869.

(Signed) BEN. F. HICKMAN,
Clerk U. S. C. Court.

And afterwards, on Saturday, the twelfth day of February, in
59 the year eighteen hundred and seventy, the following further proceedings were had in this cause, to wit:

Application for com'on to take testimony filed.

ANN PAYNE, COMPLAINANT, *ag'st* ZADOK HOOK ET AL., DEFENDANTS. SUSAN CURTIS, COMPLAINANT, *ag'st* ZADOK HOOK ET AL., DEFENDANTS. MARY GUINN, COMPLAINANT, *ag'st* ZADOK HOOK ET AL., DEFENDANTS.	In chancery—Consolidated.

This day come the complainants and Abiah Guinn and others, claiming as distributees of the estate of Fielding Curtis, deceased, by their solicitors, and file an application for a commission to take the testimony of Abiah Guinn and Tandy W. Guinn, on the part of said complainants and claimants, on the interrogatories annexed to said application.

And afterwards, on Wednesday, the twenty-third day of February, in the year eighteen hundred and seventy, the following further proceedings were had in this cause, to wit:

Order for commissions to take testimony.

	ANN PAYNE, COMPLAINANT, *ag'st* ZADOK HOOK ET AL., DEFENDANTS.	
60	SUSAN CURTIS, COMPLAINANT, *ag'st* ZADOK HOOK ET AL., DEFENDANTS. MARY GUINN, COMPLAINANT, *ag'st* ZADOK HOOK ET AL., DEFENDANTS.	In chancery—Consolidated.

This day come the parties herein, by their solicitors, and said defendants, by their solicitor, file agreements consenting to the issue of the commission for which application was heretofore made by complainants, and Abiah Guinn and others, claiming as distributees of the estate of Fielding Curtis, deceased, and also consenting to the issuing of a separate commission on the part of said complainants and claimants to take testimony on such interrogatories and cross-interrogatories as the complainants and defendants may propound, respectively, to the witnesses to be brought before the commissioner, and that such commissions be addressed to James B. Day, esquire, or any judge of any court of record, or any notary public, within the county of Culpepper, in the State of Virginia, and that the testimony be taken at the time and place, and in the manner and on the conditions in said agreements set forth: Thereupon, it is ordered by the Honorable Samuel Treat, one of the judges of this court,
61 that commissions be issued in accordance with said agreements, and that a certified copy of such agreements be annexed to said commissions.

And afterwards, to wit, in vacation of said circuit court, on the eighteenth day of March, in the year eighteen hundred and seventy, the following further proceedings were had in this cause:

Order to open depositions.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
SUSAN CURTIS, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
MARY GUINN, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
} In chancery.—Consolidated.

It is ordered by the Honorable Samuel Treat, one of the judges of this court, that all sealed depositions now on file in these causes be now opened, and that the same be delivered to Alexander Martin, esquire, heretofore appointed master in chancery in this cause, to be used by him as such master, and to be returned into court by him, together with his report in said causes.

And afterwards, at the April term of said circuit court, begun and held at the city of St. Louis, in and for the districts of Missouri,
62 on the first Monday, the fourth day of April, in the year eighteen hundred and seventy, the following further proceedings were had in this cause on Thursday, the seventh day of April, in said last-mentioned year, to wit:

Report of master and exceptions of def'd'ts filed.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
SUSAN CURTIS, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
MARY GUINN, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
} Consolidated.—In chancery.

This day comes Alexander Martin, heretofore appointed master in chancery in this cause, and files his report as such master, & also the exceptions of said defendants, referred to in said report.

And said report of said master, filed on said last-mentioned day, is in the words and figures following, to wit:

Report of master.

To the honorable circuit court of the United States for the districts of Missouri.

In obedience to the order of reference in the cases of Ann Payne and others against Zadock Hook et al., I submit herewith my report in full, which includes the notice to the parties, record of all proceedings
63 before me, the evidence in full taken before me, and my decision of the issues referred to me.

FEBRUARY 28TH, 1870—3 *o'clock p. m.*

In pursuance of the notice duly served, which is hereto annexed, come the plaintiffs, Payne, Curtis, and Guinn, by their solicitors of record, Messrs. Glover & Shepley; also Abiah Guinn, Tandy W. Guinn, Matilda Collins, Wesley Hill, Elizabeth Hill, his wife, Henry Gambs, adm'r of Abraham Curtis, dec'd, Henry Gambs, adm'r of John J. Curtis, dec'd, Henry Gambs, adm'r of Phares Guinn, dec'd, Henry B. Curtis, and Abraham C. Curtis, parties claimants as distributees before me, by their solicitors, Messrs. Glover & Shepley. And the defendants appear by Messrs. Henderson & Heyden, their solicitors; and with the consent of all parties all further proceedings are adjourned to March 1st, at 3 o'clock p. m., at the same place.

MARCH 1, 1870—3 *p. m.*

Plaintiffs and claimants proceed, having first filed a statement of facts to be proved.

The bond described in the bill, dated Sept. 24, 1862, is offered in evidence by plaintiffs. It is admitted.

The transcript of the record of proceedings in administration in the estate of Fielding Curtis, dec'd, is offered; admitted.

Deposition of George C. Marshall is offered; admitted.

Deposition of Susan Curtis offered in evidence; admitted.

Deposition of Peter J. Norris offered; admitted.

64 Also the exhibits attached to the deposition of John J. Payne offered; admitted.

Deposition of John J. Payne offered; admitted.

Deposition of Samuel R. Rixey offered; admitted.

Deposition of Fayette M. Latham offered; admitted.

Deposition of Isaac W. Bolware offered; admitted.

Deposition of M. C. Kouns offered; admitted.

Deposition of Zadock Hook offered; admitted. Also its exhibits.

Deposition of John A. Hockaday offered; admitted.

Stipulation between the counsel, dated ———, signed by Tho's T. Gantt & Glover & Shepley, offered in evidence; admitted.

Copy of the order of July 17th, 1867, offered; admitted.

Adjournment.

Adjourned to 3d day of March, 1870, at 10 a. m.

Order to take depositions.

MARCH 3D, 1870.

Parties present by their counsel. Upon application of defendants' counsel an order is granted to defendants to take the depositions of certain witnesses named in said order, at the law office of Henry C. Hayden, in the city of Fulton, Callaway County, Mo., between the 14th day of March, 1870, and 19th day of March, 1870, inclusive, in accordance with the act of Congress.

Adjournment.

And all further proceedings in this cause before me are hereby adjourned to the 23d day of March, 1870, at 10 a. m. of that day, to await the return of said depositions to me.

MARCH 23D, 1870—10 *a. m.*

65 Parties present by their counsel. Plaintiffs produce in evi-

dence certified copies of the letters of administration of Henry Gambs in the estates of John J. Curtis, Abraham Curtis, & Phares Guinn, from the St. Louis probate court; admitted.

Also a certified copy of the decision of Comm'r Delano in respect to the succession tax.

Also deposition of Abiah Guinn; admitted.

Also depositions of John J. Payne, Jeremiah Morton, jr., Peter J. Norris, Fayette M. Latham, Thomas R. Rixey, & Geo. E. Marshall, and the exhibits taken at Culpepper Court-House March 7, 1870, to the 10 March, 1870, admitted in evidence.

Pl'ffs close:

Defendants offer the depositions of Daniel Nolly, Geo. Bartley, Joshua J. P. Johnson, Henry S. Turner, Samuel H. Berry, Wm. H. Bailey, Harvey Newsom, Wm. Carrington, John A. Flood, James Rickenbaugh, Thos. B. Harris, John Bartley, Wm. Harrison, Monroe Samson, Henry Larrimore, Achilles Wilkerson, & Louis Ruhle, and any others that may have been taken at the same place and under the same notice, if omitted above.

Objections of pl'ff are noted on the margin of the def'ts' depositions.

Def'ts' objections to plaintiff's deposition are also noted on the margin.

Pl'ffs' solicitor insists upon all the objections made by Mr. Bolware to the depositions of def'ts, taken at Fulton, under the notice commencing March 14th, 1870.

66 *Zadock Hook.*

ZADOCK HOOK, being first duly sworn, testifies as follows:

State the amount of interest actually received on the Curtis estate from the time *I* took charge in 1861 to May 19, 1865.

(Def'ts' evidence objected to. The objection was well taken, and the evidence is disregarded in my report.)

Ans. As near as I can come to it is $9,563.

Ques. or demand. State what proportion of the notes due said estate was collected each year, after you took charge of it.

Ans. In answering this question, I shall have to include the interest with the principal received during the respective years. From Feb'y 25, 1861, to Feb'y 25, 1862, as near as I can approximate, I received $18,732 28, principal & interest; I can't give the interest separate from the principal. From Feb'y 25, 1862, to Feb'y 25, 1863, I received $15,286 89, principal & interest. From Feb'y 25, 1863, to Feb'y 25, 1864, I rec'd $17,297 45, principal & interest. From Feb'y 25, 1864, to Feb'y 25, 1865, I received $16,374 77, principal & interest. From Feb'y 25, 1865, to June 2, 1865, I received $479, principal & interest. There was a balance due the estate, outstanding of the original indebtedness, of about $9,410 00. This included an amount of about $1,000, which
67 I knew to be lost, on "Warren Woodson," being a note in the inventory.

Ques. What took place in Va., at Mrs. Ann Payne's, in 1865, between you and the parties, in reference to the estate of Fielding Curtis? Give the precise character of your proposition to them and theirs to you.

Ans. I proposed there to pay each full legatee or distributee of the estate of Fielding Curtis the sum of $3,800, that being the amount of money and undoubted paper in my hands at that time, stating to them that I had sustained very heavy losses in managing Fielding Curtis' estate during the four years it had been committed to my care, and that there were debts of doubtful character still outstanding and uncollected.

I did not ask them to give me a receipt in full, but to pay them this on account, and if I succeeded in collecting the outstanding debts, whatever of them I collected I was still willing to divide with them, but asked them time for an opportunity to collect. They refused to accede to this proposition, and proposed to take the sum of $4,000 instead of $3,800. I refused to pay them the $4,000, because I didn't have it. This offer, or proposal, of $4,000 from them was on the same conditions or terms with mine to them; that is, they were to take the $4,000 on account. They then made a proposition to me to transfer all their right, title,
68 and interest in & to the estate to me, if I would pay them the sum of $5,000, and that they would give me a refunding bond for $1,200 each. After reflection, I concluded to do that; and a bond was then drawn up and signed by the three parties by their agent, Peter J. Norris, for them, and witnessed by Peter J. Norris, John J. Payne, & John A. Hockaday. That bond was in accordance with the agreement, being for 1,200 each of three legatees. A release was also drawn up and signed by the same parties, for the sum of $15,000, being 5,000 to each of the 3 legatees. These papers were retained in the hands of Peter J. Norris & John J. Payne, as stated in my former deposition given at Fulton.

Ques. Payne & *M*orris say that after this they procured the releases of all the parties, except Mrs. Payne, Mrs. Curtis, & Mrs. Mary Guinn; state the circumstances under which they undertook to procure them, and the facts connected therewith.

Ans. I had paid out about all the money I had with me, and was not prepared at that time to see the other heirs or legatees. Payne & Norris manifested great anxiety that the other legatees should have their money also, and proposed to me that they would endeavor to procure releases from them upon the same terms given to the other heirs, and if I would draw up such releases, they would go around and see
69 them, while I returned home and prepared myself to pay them off, and if they succeeded, they would inform me by letter, so that I might come on and pay them off. I received a letter from Mr. Norris some time in the latter part of July, 1865, that they had procured the releases, and that I might come on and pay them the money.

Ques. What statements, if any, did you authorize Payne & *M*orris to make to these parties?

Ans. I did not authorize them to make any.

Ques. Whose suggestion was it that Payne & Norris should see the other parties?

Ans. I think it came from them. I spoke of going home to raise funds to settle with the other heirs, and they proposed to do this work while I was absent.

Ques. State the circumstances under which you paid any money to Payne & Norris, or either of them, & the amounts.

Ans. Norris stated in a conversation we had that neither himself or Payne had the money, and that he had no means of conveyance, and would be at some expense in going round to see the heirs, and asked me for a small amount to bear their expenses, and give them a slight remuneration for their services. I gave Mr. Norris, for him & Payne, $100. That is all the money I ever paid either of them.

Ques. Have you any other receipts or releases of the heirs of
70 the Curtis estate than those already filed as exhibits in this case?

Ans. I have. I herewith submit the receipts of Susan Hicks and Nancy Austin, nieces of Fielding Curtis. Copies of said receipts are hereto attached as exhibits, marked A & B.

(Pl'ffs' counsel objects. Objection overruled.)

Ques. What was the custom of the Callaway County court during the war, in reference to the management and use of moneys of estates in the hands of administrators, & state your means of knowledge?

(Objection by pl'ffs, that it is incompetent and irrelevant.)

Ans. I was public adm'r of Callaway County, and had charge of a large number of estates. The custom of the county court in reference to administration during the war was to leave estates in their hands, to be controlled by them and managed by them to the best advantage, except where debts were to be paid and distribution made. In their settlements the court charged them with whatever interest they received, or, if they used the money, and so reported, they were charged with six per cent. Where moneys were on hand, and could not be safely loaned out, they were not charged with any interest.

Ques. State how your settlements were made with reference to this custom of the county court.

(Objected to by pl'ffs' solicitor, as incompetent and irrelevant. Ob. sust'd.)

71 Ans. The first two years of my administration I charged myself with six per cent. upon the bonds and notes in my hands, except, during the first year, I did not charge myself with any interest on the interest that was summed up in the inventory, because it did not draw interest. During the rest of my administration I charged myself with what interest I actually received up to my settlement, in May, 1865.

Ques. In the administration of Curtis's estate, what verbal instructions or orders, if any, did you receive from the judges of the county court of Callaway County, while in session, in reference to the investment of the moneys of said estates?

(Objection of pl'ffs' solicitor as incompetent & irrelevant. Objection sustained.)

Ans. I called on the court at different times for orders disposing of the assets in my hands. They stated to me that times were too uncertain for them to make orders to loan out money, and that I must use my own discretion in handling the money until I met with an opportunity to let it out.

Ques. The highest average rate of interest for loan of money current in Callaway County during the war, you will please state.

(Objection made & sustained.)

72 Ans. This is hard for me to answer. I am satisfied that the highest average rate of interest did not exceed six per cent. from 1862 on during the war. I knew of money loaning at 3 & 4 per cent.

Ques. In your former deposition, I find that you claim a credit of $610, for money paid Mrs. Sappington.

Ans. I did not pay the money at that date, to wit, Nov., 1865, but Mr. Sappington had been to some extent acting as an agent for me in Boone County during the previous years of the administration, and had got some money into his hands not previously accounted to me for, and at this date, Nov., 1865, I took his receipt.

Ques. In your first settlement of the Curtis estate, I find you are credited with commission on only $664 05, and in subsequent settlements on other small sums. State the principle on which these commission credits were made.

Ans. In our county court it is the practice to allow commissions to adm'rs & ex'rs on the amounts of money paid out by them up to the time of each settlement. At the final settlement we charge commissions

on the whole fund as estate in our hands upon which we have not already charged commissions.

Ques. State, as near as you can, the number of days spent by you in the administration of this estate.

Ans. I can't state definitely, but I suppose I was employed
73 about ⅓ of my time in managing this estate.

Ques. What moneys were used in the purchase of the gold referred to in your former depositions?

(Objection by pl'ffs' solicitor as incompetent & irrelevant.)

Ans. The gold was purchased with the money of the estate and for the benefit of the estate exclusively.

Cross-examination by ——— :

Ques. Who is Mr. John A. Hockaday, and how did he happen to be with you in Va., in 1865?

Ans. He went with me for company. He is a lawyer in Fulton. The release of the three legatees was drawn by him in one paper.

Ques. Have you the letter that Norris wrote you above mentioned, and will you produce and file the same?

Ans. I think I have it at home, and am willing to produce and file it when convenient.

Ques. Pl'ffs' solicitor shows to the witness a refunding bond of T. W. Guinn, Matilda Collins, Abram C. Curtis, Henry B. Curtis, Abiah Guinn, to Zadock Hook, and asks the witness, What do you know about this paper, and in whose handwriting is it?

Ans. That paper was drawn up and given to Mr. Norris & Payne, or one of them, when they undertook to get the release of the other
74 heirs. It is in the handwriting of Mr. Hockaday. He was present in Washington City when the money was paid to the three legatees. Mr. Norris said he had better draw up a paper as well as some releases for the others to sign, similar to such as had been given by the three legatees. This refunding bond was never my paper; was not delivered over to me as a paper. Mr. Norris requested Mr. Hockaday to prepare this paper, and all the papers.

Ques. Did you request Mr. Hockaday to prepare this paper?

Ans. I don't remember that I did. I may have done so, but I don't remember.

Ques. Did you give your consent to the drawing of this paper in the form in which it is?

Ans. I did not object to it.

Ques. Did you give your consent to it?

Ans. I did not object to it; my consent, I suppose, was given to it. I had no objection, as it did not concern me. I didn't ask it.

Ques. Did you request Mr. Hockaday to draw the refunding bond signed by Ann Payne, Mary Guinn, and Susan Curtis?

(Objected to def'ts' by counsel.)

Ans. I don't remember who requested him to draw that bond.
75 Ques. Does this refunding bond, signed by T. W. Guinn and others, or did the refunding bond signed by Ann Payne and others, state anything to which you objected at the time?

Ans. I don't remember.

Ques. Did you not know that the refunding bond drawn by Mr. Hockaday and delivered to Norris was to be shown by him to said T. W. Guinn and others, distributees of Fielding Curtis, for their signatures?

Ans. It was drawn for that purpose, and, of course, I supposed that it would be shown to them for that purpose.

Ques. Did not Mr. Norris tell you that he would procure the signatures of parties to that paper if he could; and did not you desire him to do so?

Ans. He proposed to get the signatures of the parties to it. About my desiring him to do so, I don't remember.

Ques. Do you mean to state that you did not want a refunding bond from the other heirs?

Ans. I do not mean so to state.

Ques. Did you not say to Norris and Payne, or one of them, that you desired a settlement with the other heirs on the same terms which had been adjusted with the three old ladies; and was not the refunding bond of T. W. Guinn & others drawn up to carry out your desire; and did not said Norris and Payne, or one of them, undertake to
76 procure such settlement?

Ans. I can't say whether I told Norris & Payne that I desired such a settlement; but I did desire it, as I have stated. Both Norris & Payne undertook to procure such a settlement.

Ques. Did you not say to Norris & Payne, or one of them, that you desired to have refunding bonds from all the heirs; but on being told that Abraham Curtis would probably refuse, did you then not say that, if the others would sign a refunding bond, they might leave out him?

Ans. I told Mr. Norris & Payne if all the heirs went into the arrangement I didn't care anything about the refunding bonds of any of them. I never stated to John Payne, or any other person, that he might leave out the name of Abraham Curtis. I don't remember stating to Norris & Payne that I desired refunding bonds from all the heirs.

Ques. What did you say, if anything, to Norris & Payne, or either of them, about the refunding bond prepared by Mr. Hockaday after the settlement with the three old ladies?

Ans. I don't remember what I said.

Ques. Did you ever make any objection to the refunding bond signed by T. W. Guinn & others being shown to the parties who signed it?

Ans. I never made any objection of the kind. I never saw it
77 after it was drawn until Sept., 1869.

Ques. Do you know how that refunding bond came to the hands of James W. Guinn, of Culpepper, if it ever was in his hands?

Ans. I do. He snatched it from Peter J. Norris when he was giving his testimony. A short time previous to that, Mr. Norris had handed me the bond to look at it. I had looked at it, and Mr. Norris not being present when I finished looking at it, I put it in my pocket; and whilst Mr. Norris was testifying, he called for it, and when I handed it to Mr. Norris, Mr. Green snatched it from him.

Ques. Did not you tell Mr. Green that you had that refunding bond, and that he could have it if he wanted it?

Ans. When the bond was spoken of, Mr. Norris asked me for it. I handed it to him. I don't remember that I told Mr. Green that he could have it. It was not mine, and never had been mine.

Ques. Will you say that you did not tell Mr. Green that he could have that paper if he wanted it?

Ans. I did not so tell Mr. Green.

Ques. Did you have any conversation with Mr. Green about the existence of said bond; and if so, what?

Ans. I don't remember having any further conversation than that already given.

Ques. Why did you wish to look at this paper which Mr. Norris had taken from the heirs?

78 Ans. I don't remember for what purpose. He told me he had it, and I think he showed it to me.

Ques. Did you tell Norris that he had taken said bond of T. W. Guinn & others without authority from you, or against your consent?

Ans. No.

Ques. Did you ever tell Mr. Norris that he had no right to represent to T. W. Guinn & others that $3,800 was the value of ⅛ of the Curtis "estate" in 1865, or to ask them to sign a paper for you containing that representation?

Ans. I did not tell him not to do so, nor did I tell him to do so.

Ques. Did you ever say to Mr. Norris or Payne that they, or either of them, had done you injustice by procuring from any of the heirs of Curtis's estate a settlement on the representation that $3,800 was the value of an ⅛ thereof in 1865?

(Objected to by def'ts' solicitor.)

Ans. They never told me that they had so represented to these heirs; nor did I know that they had so represented.

Ques. Don't you know that the refunding bond signed by T. W. Guinn and others, and the refunding bond signed by Ann Payne & others, each contain that statement or representation?

Ans. I know that each one of the bonds contain that.

79 Ques. Do you know how long John A. Hockaday was acting as attorney for Norris & Payne, or either of them, in drawing papers about your business; if he was so acting while in Va. with you?

Ans. I don't know that he was acting as attorney for anybody. He was willing to write.

Reëxamination:

Ques. Do you know whether Payne & Norris, as the friends and representatives of the 3 old ladies, had any interest or motive in securing the releases of the other heirs?

Ans. I do not; they were anxious to get back the refunding bonds of the three old ladies, which were to be given up if releases were obtained from all the other heirs.

Ques. Do you know whether Norris or Payne ever received any compensation from the other heirs, for collecting their money at the time they took the releases?

Ans. I heard Abiah Guinn say that they had charged them all 5 per cent. for collecting the money.

(Signed) ZADOK HOOK.

And the Exhibit "A," referred to in the foregoing deposition of Zadok Hook, is in the words and figures following, to wit:

Exhibit "A," referred to in deposition of Zadok Hook.

For and in consideration of the sum of seven hundred and fourteen and $\frac{28}{100}$ dollars to me, the undersigned, Susan Hicks, of the county
80 of Boon, in the State of Kentucky, in hand paid by Zadock Hook, of the county of Callaway, in the State of Missouri, the receipt of which I do hereby acknowledge, I, the said Susan Hicks, do hereby sell, transfer, assign, and set over to the said Zadock Hook, all my right, title, interest, and claim in and to all sums of money, personal effects, and choses in action to which I am or may be entitled as heir at law

and distributee of the estate of Fielding Curtis, late of the county of Callaway, in the State of Missouri; the said Susan Hicks being a child of Sally Wilhorst, (now deceased,) who was a sister of the said Fielding Curtis, deceased, and as such interested in said estate. And in consideration of the premises, I do further hereby release, absolve, and acquit Zadock Hook, of the said county of Callaway, in the State of Missouri, from all liability or indebtedness to me as heir as aforesaid by virtue of his office and trust as administrator of said estate; this instrument of writing being intended as a full and final settlement between us. Given under my hand and seal this 11th day of August, 1865.

(Signed) SUSAN her + mark. HICKS. [SEAL.]

Attest: CORNELIUS QUICK.

And also the Exhibit B, referred to in said deposition of said Zadok Hook, is in the words and figures following, to wit:

Exhibit B, referred to in deposition of said Hook.

81 For and in consideration of the sum of seven hundred and fourteen and $\frac{28}{100}$ dollars to me, the undersigned, Nancy Austin, of the county of Randolph, in the State of Missouri, in hand paid by Zadock Hook, of the county of Callaway, in the State aforesaid, the receipt of which I do hereby acknowledge, I, the said Nancy Austin, do hereby sell, transfer, assign, and set over to the said Zadock Hook all my right, title, interest, & claim in and to all sums of money, personal effects, and choses in action to which I am or may be entitled as heir at law and distributee of the estate of Fielding Curtis, late of the county of Callaway, in the State of Missouri, the said Nancy Austin being a child of Sally Wilhorst, now deceased, who was a sister of the said Fielding Curtis, deceased, and as such interested in said estate. And in consideration of the premises, I do further hereby release, absolve, and acquit Zadock Hook, of the said county of Callaway, in the State of Missouri, from all liability or indebtedness to me as heir aforesaid by virtue of his office and trust as administrator of said estate; this instrument of writing being intended as a full and final settlement between us. Given under my hand and seal this 7th day of Sept., 1865.

(Signed) NANCY AUSTIN. [SEAL.]

Attest, (signed,) HENRY A. NEWMAN.

Defendants close.

82 *Decision of master.*

Decision.

I am instructed in the order to take the whole amount of the gold, silver, Missouri bank notes, and promissory notes mentioned in the inventory of Zadock Hook, and add thereto the amount of the sale bill and heirs of slaves, and to the aggregate add an amount equal to ten per cent. per anum on the whole amount of said promissory notes from the day of filing the inventory up to the day of the first settlement, and from this amount so ascertained to deduct the whole amount of credits allowed said Zadock Hook on said settlement for payments made by him other than payments to a distributee of a distributable share, and on the balance thus ascertained to calculate and add interest at the same rate up to the date of the next settlement, and to continue to com-

pound the debits and credits, or rather the balance due at each settlement, down to April 1, 1870. In obedience to this order I submit the following account:

Acc. Zadock Hook, adm'r, to estate of Fielding Curtis,	Cr.	Dr.
To principal in inventory		62,444 42
To 10 per cent. int. from Feb'y 26, 1861, date of inventory, to 20 May, 1862, 1st settlement		7,701 46
To sale bill of personal property		24 60
To interest on sale bill from time it was due, M'ch 16th, 1862, to May 20, 1862.		43
83 To interest in inventory prior to 26th Feb'y, 1861, (per inventory)		4,094 27

CONTRA.

By voucher No. 1, May 23, '61	306 00	
" interest $^{10}/_{00}$ to May 20, '62	30 35	
" voucher No. 2, Apr'l, 18, '61	30 00	
" interest	3 28	
" voucher No. 3, May 11, '61	75 00	
" int	7 68	
" voucher No. 4, Feb'y 25, '61	53 40	
" int	6 67	
" voucher No. 5	53 65	
" do. No. 6, M'ch 16, 61	3 50	
" int	41	
By voucher No. 7, M'ch 16, '61	2 00	
" int	24	
" voucher No. 8, Feb'y 26, '61	4 00	
" int	49	
" voucher No. 9, Feb'y 26, '61	4 00	
" int	49	
" voucher No. 10, July 5, '61	2 00	
" int	17	
" voucher No. 11, Sept. 10, '61	5 00	
" int	34	
" voucher No. 12, M'ch 3, '62	1 25	
" int	3	
" voucher No. 13, M'ch 15, '62	3 75	
" int	7	
84 " voucher No. 14, Ap'l 21, '62	90 00	
" int	75	
" voucher No. 15, May 15, '62	25 00	
" int	3	
" blanket for negroes	1 50	
" hat and socks	1 00	
" expenses to Columbia	3 00	
	715 05	74,264 18
To balance in adm'r hands May 20, 1862.		73,549 13

Acc. Zadock Hook, adm'r, to Fielding Curtis estate.

		Cr.	Dr.
1863.	To balance, May 20, 1862		73,549 13
May 21.	To interest $^{10}/_{100}$ from May 20, '62 to May 21, 63		7,375 34
	To proceeds of the hire of negroes for 1862		147 50
	CONTRA.		
	By voucher No. 1, (2 settlement Oct. 21, '62	2 60	
	" int. to May 21, '63	15	
	" voucher No. 2, Nov. 8, '62	50	
	" int	3	
	" voucher No. 3, Sept. 10, '62	3 90	
	" int	26	
	" voucher No. 4, Sept. 10, '62	1 60	
	" int	11	
	" voucher No. 5, Dec. 15, '62	1 50	
	" int	6	
	" voucher No. 6, Dec. 5, '62	10 45	
	" int	48	
85	" voucher No. 7, May 7, '63	325 00	
	" int	1 25	
	" voucher No. 8, July 12, '62	100 90	
	" int	6 85	
	" voucher No. 9, May 6, '63	205 00	
	By int. on v. 9	85	
	By voucher		
	" expenses to Mexico	5 00	
	" do. to Columbia	1 50	
	" revenue stamps	6 50	
	" cost in suits	7 21	
	" expenses for monument	15 00	
	" clerk's fees (v. 16)	5 25	
		701 95	81,071 97
	To balance in hands adm'r May 21, 1863 date of 2 settlement		$80,370 02

Zadock Hook adm'r to estate of Fielding Curtis.

1864.		Cr.	Dr.
May 18.	To balanc due May 21, 1863		80,370 02
	To interest $^{10}/_{100}$ from May 21, '63, to May 18, '64		7,971 03
	To hire of negroes for 1863		190 00
	CONTRA.		
	By voucher No. 2, Dec. 9, '63	755 00	
	" int	33 56	
	" voucher No. 3, Ap'l 1, '64	62 50	
	" int	82	

	" voucher No. 4, Nov. 27, '63	39 00	
86	" int	1 86	
	" voucher No. 5, Dec. 30, '63	12 50	
	" int	36	
	" voucher No. 6, Jan'y 13, '64	110 50	
	" int	3 84	
	" voucher No. 7, Ap'l 25, '64	55 00	
	" int	47	
	" voucher No. 8, Nov. 1, 63	874 68	
	" int	48 88	
	" clerk's fees	1 00	
		1,999 97	88,531 05
	To balance in hands adm'r May 18, '64, 3d settlement		86,531 08

Zadock Hook to estate of Fielding Curtis.

1865.		Cr.	Dr.
May 19.	To balance of May 18, '64		86,531 08
(4th set)	To interest $^{10}/_{100}$ on same from May 18, '64 to May 19, '65		8,677 13

CONTRA.

	By voucher No. 1, Ap'l 28, '65	15 00	
	" int	8	
	" voucher No. 2, Ap'l 28, '65	26 00	
	" int	14	
	" voucher No. 3, Feb'y 27, '65	2 50	
	" int	5	
	" voucher No. 4, Nov. 1, '64	408 00	
	" int	22 66	
	" clerk's fees	1 25	
87		475 68	95,208 21
	To balance in hands of adm'r May 19th, 1865, date of 4th settlement		94,732 53

Zadock Hook, adm'r, to Fielding Curtis estate.

1866.		Cr.	Dr.
May 20.	To balance from May 19, '65		94,732 53
(5th set- tlement.)	To int. on same from May 19, '65 to May 20, '66		9,499 56

CONTRA.

	By Boone Co. sh'ff, May 29, '63	32 15	
	" int. to May 20, '66 $^{10}/_{00}$ comp'd	10 63	
	" Ja's R. Shields, May 23, '65	350 00	
	" int. to May 20, '66	35 00	
	" A. H. Martin, Rev. Col. Sept. 5, '65	163 28	

" int. to date	11 56	
" sh'ff, of Callaway Nov. 1, '65	600 00	
" int. to May 20, '66	31 67	
	1,234 29	104,232 09
Balance in hands adm'r May 20, '66		102,997 80

Zadock Hook, adm'r, to estate of Fielding Curtis est.

	Cr.	Dr.
May 20. 1867. To balance from May 20, 1866		102,997 80
(6th set.) To interest $^{10}/_{00}$ on same from May 20, '66 to May 20, '67		10,299 78
Balance in hands adm'r May 20, '67		113,297 58

88 *Zadock Hook to estate of Fielding Curtis est.*

May 20. To balance from May 20, 1867		113,297 58
1868. To interest $^{10}/_{00}$ from May 20, '67 to May		
7th set. 20, '68		11,329 75
Balance in hands adm'r May 20, '68		124,627 33

Zadock Hook to Fielding Curtis estate.

May 20. To balance from May 20, '68		124,627 33
1869. To interest $^{10}/_{00}$ from May 20, '68 to May		
(8 set.) 20, '69		12,462 73
Balance in hands of adm'r May 20, '69		137,090 06

Zadock Hook to Fielding Curtis estate.

Ap'l 1. To balance from last settlement May 20, '69		137,090 06
1870.		
(9 set.) To interest on same from May 20, '69		12,109 63
Balance in hands adm'r April 1, 1870		$149,199 69

I am also instructed to inquire into and state an account as to the items charged against the administrator in the inventory which have not been collected and are not collectable. In making this account I cannot pass out of the inventory to consider losses on investments. In obedience to the order, I find and report the following claims uncollected and uncollectable, with $^{10}/_{00}$ int. on annual rests.

Zadock Hook to Fielding Curtis estate.

			Cr.	Dr.
	Sept. 8th.	By loss on Cary Turner's note.....	154 53	
89	1863.	" int. from Sept. 8, '63, to Ap'l 1, '70 (comp'd).....	135 30	
	June 15,	" loss on Woodson notes.....	1,369 83	
	1865.	" int 10/00 to Ap. 1, '70.....	794 47	
			$2,454 13	

I am also instructed to inquire into and state an account showing what interest was actually received by said adm'r on claims stated in the inventory to have borne six per cent. interest, or on those in respect to which the rate of interest was not stated in the inventory, or not known, and report the several amounts of interest so found by him to have been collected, bringing the amount in the same way down to the day of my report, and showing the result, if such interest was collected at the rate of 10 per cent., and also the result provided the interest collected on said items was only 6 per cent. In obedience to this instruction, I find and report the following claims in the inventory as bearing only 6 per cent interest:

6 per cent claims:

Note of W'm Darby due 12 Dec. '60		$145 00
"	Renor & Boyd	100 00
"	S. N. King	40 00
"	Lunday & Martin	145 70
"	Benjamin Ficklin	84 00
(See p. 5 of inventory.)		$514 70

Note of Sam. C. Wood due Jan'y 1, '62		42 00
"	Peter Smith due Dec. 25, '61	130 00
90 "	W'm J. Hudson " Dec. 26, '61	35 00
"	J. N. B. Neil due 2 Jan'y '62	110 00
"	Sutton Critchfield due Jan'y '62	40 00
(See inventory, p. 6.)		$357 00

Interest at 10/00 with annual rests upon said claims is	$956 67
Interest at 6/00	$574 01
Difference between 6 per cent. int. & 10 per cent. int. on said claims is	382 66

I find that the adm'r collected them at the rate of 6 per cent. int. Having included them in the computation based upon the inventory at the rate of 10 per cent., the adm'r is entitled to a credit of the difference between 6/00 & 10/00 upon them. I am also instructed to inquire and report what claims if any have been preferred or allowed against the estate of Fielding Curtis and remain unpaid or undetermined; and what costs and fees are due and unpaid to any officer or other person, than a distributee of said estate. I do not find any such claims, or fees,

or costs. I am also instructed to ascertain and report what commissions are due to said administrator under the laws of Missouri, which I do as follows:

Under the laws of Missouri he was entitled to 5 per cent. upon all sums under $2,000, and 3 per cent. on all sums exceeding $2,000 prior to August 1,1866, the date of our new revision. After that date he was entitled to 5 per cent. upon all sums. His percentage is calculated
91 only on the payments or disbursements of the administrator.

Being entitled to deduct his commissions, or claim them from the estate at the time of the disbursements, I have allowed them to him upon the actual disbursements, according to the settlements, and according to the evidence of the payments, at the end of each year, that is at the date of each settlement, together with 10 per cent. interest calculated upon annual rests. According to this method of calculation his commissions on most of the money already disbursed by him would be at the rate of 3 per cent. I have gone through with the payments made by him, including those made to the distributees, and computed the interest with annual rests, and find that for all disbursements heretofore, he is entitled to the sum of $2,509 70. I also find that he is entitled to a commission of 5 per cent. upon the amount found by me to be in his hands ready for distribution, which will be the sum of $3,610. I am instructed to exhibit an account showing the payments by said Hook, administrator, to the several distributees of said estate, calculating interest on the said payments with annual rests. In obedience to this instruction I submit the following account showing the dates, amounts, and interest, with rests upon all payments:

1865.					
June 19.	To Mrs. Ann Payne.....	$5,000	with int.	10/00	$7,891 89
" "	Mrs. Susan Curtis.....	5,000	"		7,891 89
92 " "	Mrs. Mary Guinn.....	5,000	"		7,891 89
July 18.	To Abraham Curtis...	5,000	"		7,832 92

1865.	Children of Elijah Curtis, dec'd:				
Oct. 16.	To Benjamin W. Curtis,	$1,250	with int.	10/00	$1,913 99
July 16.	" Abraham C. Curtis.	1,250	"		1,959 74
Feb'y 10, 1866.	" John Curtis, adm'r.	1,250	"		1,855 53
July 16, 1865.	" Henry B. Curtis....	1,250	"		1,959 74

Children of Elizabeth Gwinn, dec'd:

July 16, 1865.	To Abiah Gwinn.....	$714 28	with int.		$1,119 82
" "	" Tandy W. Gwinn.....	714 28	"		1,119 82
May 23, 1866.	" Melton Gwinn.....	714 28	"		1,031 05
Aug. 11, 1868.	" Alfred Gwinn.....	714 28	"		835 89
July 16, 1865.	" Matilda Collins.....	714 28	"		1,119 82
" "	" Elizabeth Hill.....	714 28	"		1,119 82
	" Henderson Gwinn....				
	" Phares Gwinns, adm'r.				

Children of Sarah Wilhorst, dec'd:

July 18, 1865.	To Melton Wilhorst.....	$714 28	with int.		$1,118 95
" "	To Elizabeth Wilhorst....	714 28	"		1,118 95
" "	To Curtis Wilhorst.....	714 28	"		1,118 95
Aug. 11.	" Susan Hicks.....	714 28	"		1,112 56
Sept. 7.	" Nancy Austin.....	714 28	"		1,104 72
July 18.	" Susan Simms.....	714 28	"		1,118 95

To Children of Mildred Broken ne Wilhorst, dec'd:

July 16, 1865.	To Elizabeth Broken,	$119 05	int. added	186 39
93	" Rob't Broken . . .	119 05	"	186 39
	" W'm Brooken . . .	119 05	"	186 39
	" Curtis Brooken	119 05	"	186 39
	" James Brooken	119 05	"	186 39
	" John Brooken	119 05	"	186 39

Children of William Curtis, dec'd.

Nov. 11, 1861.	To Mrs. Ann Burnham . .	$4,341 65	with int.	9,668 59
Dec. 28. 1862.	" Mrs. Virginia Sappington,	261 88		
Ap'l 26,	" " "	1,214 47		
June 18.	" " "	57 26		
July 17.	" " "	111 08		
Nov. 13.	" " "	180 70		
1863, M'ch 25.	" " "	1,100 00		
1864, Nov. 2.	" " "	1,000 00		
1865, Nov. 16.	" " "	610 00		
		4,535 39		
				8,629 28
				$71,653 10

I am instructed to exhibit a balance sheet showing the indebtedness of said Hook to said estate without including any payments to the heirs or distributees, and I submit the following:

Zadock Hook to the estate of Fielding Curtis, dec'd,

	Cr.	Dr.
To am't per inventory with rests $^{10}/_{00}$ (after deducting payments other than to distributees,)		$149,199 69
CONTRA.		
94 By uncollectable debts with $^{10}/_{00}$ int. comp'd	$2,454 13	
By difference between 6 & 10 per cent. on 6 per cent. claims calculated in debits at $^{10}/_{00}$,	382 66	
By commissions on all payments	2,509 70	
By commissions on future distribution	3,610 00	
	8,956 49	149,199 69
To balance due estate and subject to distribution		$140,243 20
Full distributive share		8) 140,243 20
		17,530 40
Rec'd		$7,891 89
		9,638 51

I also submit an account showing the indebtedness of said Hook to the estate, including and giving credit for all payments to the distributees:

Zadock Hook to estate of Fielding Curtis, dec'd.

	Cr.	Dr.
To am't per inventory, after giving credit for all payments other than to distributees.....		$149,199 69
CONTRA.		
By uncollectable debts	2,454 13	
By difference between 6 & 10 per cent. int. on 6 per cent. claims calculated in debits at 10....	382 66	
By payments to distributees.....	71,653 10	
" commissions comp'd on all payments.....	2,509 70	
" commissions to be deducted on paying over balance of estate	3,610	
	80,609 59	149,199 69
95 To balance in adm'r hands April 1, 1870,		$68,590 10

I have been ordered to inquire and report the names of the distributees of the estate of Fielding Curtis. The following parties have appeared before me, which list includes the original complainants:

		Share.	Rec'd.	Still due.
1-8	Ann Payne	$17,530 40—	$7,891 89=	$9,638 51
1-8	Susan Curtis	$17,530 40—	7,891 89=	9,638 51
1-8	Mary Gwinn	17,530 40—	7,891 89=	9,638 51
1-8	Abraham Curtis (dec'd) adm'r	17,530 40—	7,832 92=	9,697 48
	Children of Elizabeth Gwinn, dec'd:	Share.	Rec'd.	Still due.
1-8 of 1-8 = 1-64	Abiah Gwinn	$2,191 30—	$1,119 82=	$1,071 48
" 1-64	Tandy W. Gwinn	$2,191 30—	1,119 82=	1,071 48
" 1-64	Matilda Collins	2,191 30—	1,119 82=	1,071 48
" 1-64	Elizabeth Hill	2,191 30—	1,119 82=	1,071 48
" 1-64	Phares Gwinn, adm'r	2,191 30—	0,000 00=	2,191 30
	Children of Elijah Curtis, dec'd:	Share.	Rec'd.	Due.
1-4 of 1-8 = 1-32	John J. Curtis, adm'r	$4,382 80—	$1,855 53=	$2,527 27
" 1-32	Henry B. Curtis	4,382 80—	1,959 74=	2,423 06
" 1-32	Abraham C. Curtis	4,382 80—	1,579 74=	2,423 06
	Am't due the above parties			$52,463 62

The foregoing twelve distributees are all who have appeared before me to claim the benefits of the decree. The remaining distributees are as follows:

	Children of Elijah Curtis, dec'd:	Share.
1-4 of 1-8 = 1-32	Benjamin W. Curtis	$4,382 80
96	Children of Elizabeth Gwinn, dec'd:	Share.
1-8 of 1-8 = 1-64	Milton Gwinn	$2,191 30
" 1-64	Alfred Gwinn	"
" 1-64	Henderson Gwinn	"
	Children of Sarah Wilhoit, dec'd:	Share.
1-7 of 1-8 = 1-56	Milton Wilhoit	$2,504 30
" 1-56	Ezekiel Wilhoit	2,504 30
" 1-56	Curtis Wilhoit	2,504 30
" 1-56	Susan Hicks	2,504 30
" 1-56	Nancy Austin	2,504 30
" 1-56	Sarah Simms	2,504 30
	Mildred Brokin's children ne Wilhoit.	Share.
1-6 of 1-56 = 1-336	Ezekiel Brokin	$417 38
" 1-336	Rob't Brookin	417,38
" 1-336	W m Brooken	417 38
		Share.
" 1-336	Curtis Brooken	$417 38
" 1-336	James Brooken	417 38
" 1-336	John Brooken	417 38
	Children of W'm Curtis, dec'd:	Share.
1-16	Mrs. Ann Burnham	$8,765 20
1-16	Mrs. Virginia Sappington	8,765 20

The amounts paid to these distributees appear in my report. It would seem that the administrator had overpaid the two last. What remains still due to these distributees, although disclosed in this report, is not a matter now of any import, since they have not appeared
97 before me to claim it. And it may be that they are satisfied with what they have received; and if they seek to avoid the acquittances they have given, they will have to do it in some other proceeding. I have only indicated the amounts due them on the assumption that they sought to avoid their releases upon the same grounds with the rest, which they have not done.

It is urged by the learned counsel for the defendants, that as master in this case, I am not bound by the decree to find that the acquittances and releases given by the new distributees, appearing before me, were fraudulent and void. The evidence relating to these releases is about the same as that upon which the court bases its decree in the original case, & that decree is a precedent to me, and I do not feel at liberty to depart from it, especially when I reflect that my report is to be returned to the court that rendered it. I accordingly find that all the releases, discharges, and acquittances, made by the new distributees, appearing before me, and mentioned in the statement filed before me, were fraudulently obtained, and that they are for that reason null and void; and that all the monies received by said distributees, upon the giving of said releases, ought to be and are by me credited to the administrator, as so much paid on account of the respective distributive shares.

For the same reason, I feel bound to follow the decree of the
98 court in the method of computing interest, and in the amount of

interest exacted of the administrator, irrespective of the rates of interest in Callaway County.

It will be seen from the account made out by me that the administrator has in his hands the sum of fifty-two thousand four hundred and sixty-three dollars and sixty-two cents due to the distributees appearing before me, whose names appear on page fifty of this report, and that said sum is due to them respectively as indicated in the right-hand column of said page fifty.

All of which is respectfully submitted this 1st day of April, 1870.

(Signed) ALEX. MARTIN,
Master pro hac vice.

Fee of master, $400.

(Signed) ALEX. MARTIN.

APRIL 7th, 1870.

Now come the defendants and submit their exceptions to the foregoing report; which exceptions, having been by me duly considered, are all overruled.

(Signed) ALEX. MARTIN,
Master in chancery pro hac vice.

And the statement of facts filed before the master and referred to in his report is in the words and figures following, to wit:

Statement of facts filed before master.

In the circuit court of the United States for the districts of Missouri.
In chancery.

ANN PAYNE, SUSAN CURTIS, & MARY GUINN, pl'ffs, *vs.* ZADOC HOOK ET AL., DEF'TS. } Consolidated suit in chancery.

99 Proceedings before Alexander Martin, esq., master in chancery, directed to state an account in the above-entitled cause.

Abiah Guinn, Tandy W. Guinn, Matilda Collins, Wesley Hill and Elizabeth Hill, his wife, Henry Gambs, administrator of Abraham Curtis, deceased, Henry Gambs, administrator of John J. Curtis, deceased, Henry Gambs, administrator of Phares Guinn, deceased, Henry B. Curtis, and Abraham C. Curtis do hereby appear before the master to take the benefit of the interlocutory decree rendered for plaintiffs in said cause, and have the account taken for their benefit as well as plaintiffs'. The said parties now appearing present the following statement of facts, showing their rights in the premises:

That Fielding Curtis died in Callaway County, Missouri, in February, 1861, intestate; was never married; left no lineal descendants, father or mother, grandfather or grandmother, or any ascending kindred. Said Fielding had only three brothers, viz: William, Elijah, and Abraham; and only five sisters, viz: Ann Payne, Susan Curtis, and Mary Guinn, the said plaintiffs, also Sarah Wilhoyt and Elizabeth Guinn; and all said sisters, plaintiffs, were widows at the death of said Fielding. Abraham Curtis, brother of said Fielding, a citizen of Virginia, died in Culpepper County, Va., after said Fielding's death, in 1865 or

100 1866, and the appearer, Henry Gambs, is his administrator under the laws of Missouri; said Abraham was entitled to an eighth of said Fielding's estate. Said Elijah Curtis, a citizen of the State of Virginia, and brother of said Fielding, died before the death of said Fielding, leaving only four children, viz: said Henry B. Curtis, Abraham C. Curtis, John J. Curtis, and Benjamin W. Curtis, all citizens of Virginia, the said four children being entitled to one-eighth of the estate of said Fielding. That said John J. Curtis died after the death of said Fielding, and the appearer, Henry Gambs, is administrator of said John J. Curtis, deceased, under the laws of Missouri. That said Elizabeth Guinn, the sister of said Fielding, and a citizen of Virginia, died before the death of said Fielding, leaving only eight children; and the appearers, Abiah Guinn, Tandy W. Guinn, Matilda Collins, a widow, and Elizabeth Hill, wife of Wesley Hill, all citizens of Virginia, are four of said children. That Phares Guinn, deceased, another son of said Elizabeth, and a citizen of Virginia, died since the death of said Fielding, and the appearer, Henry Gambs, is his administrator under the laws of Missouri; said five children of said Elizabeth Guinn, dec'd, are entitled to five-eighths of one-eighth of said Fielding's estate.

The said Fielding Curtis's estate, at his death, consisted of money, bank notes, bonds, promissory notes and debts due to him
101 from sundry persons, slaves, and some other articles of personal property, in all not exceeding eighty thousand dollars in value. The amount of available assets which came to the hands of his administrator was not less, excluding the slaves, than sixty-six thousand dollars.

That said Hook, as public administrator of Callaway County, Missouri, on the 18th day of March, 1861, took said estate into his hands for administration, and soon after returned an inventory of the property thereof. May 20th, 1862, said Hook, as administrator of said estate, made his first annual settlement, showing a balance in his hands of $\$69{,}612\frac{68}{100}$. In May, 1863, said Hook, as adm'n'r, made his second annual settlement, showing a balance in his hands of $\$65{,}184\frac{96}{100}$. In May, 1864, said Hook, as administrator, made his third annual settlement, showing a balance in his hands of $\$64{,}542\frac{09}{100}$. In May, 1865, said Hook, as administrator, made his fourth annual settlement, showing a balance in his hands of $\$63{,}586\frac{76}{100}$; and he has made no other settlement of his accounts as administrator of said estate with the county court of Callaway County, Missouri, and ever since has refused to render any account of his actings and doings in respect to said estate to any court or to any party interested therein.

That his said several settlements with the Callaway County
102 court, and each of them, as made, was erroneous, false, and fraudulent. He did not, in said settlements, or in either of them, charge himself with the full amount of interest due to the estate. That he, said Hook, received ten per cent. interest on almost all the debts due to said estate, the amount thereof bearing six per cent. interest being very small, as his inventory will show; yet he never charged himself, in any of his settlements, with a higher rate of interest than six per cent. per annum. That he did not charge himself, in any settlement, with the full amount of money in his hands. That he should have charged himself, at each settlement, with interest at ten per cent. per annum on the whole amount of money in his hands. His said settlements, and each of them, is false & fraudulent in not adding ten per cent. interest per annum to the amount in his hands not accounted for at the last settlement.

The amount charged against himself for interest in his first annual

settlement is false and fraudulent, because the same was not equal to ten per cent. per annum, which he received, or ought to have received, on said balance unaccounted for.

That the amount charged against himself for interest in his second annual settlement is false and fraudulent, because the same was not equal to ten per cent. per annum on the previous balance in his hands unaccounted for.

That the charge against the said administrator of $1,460 for
103 interest, in his third annual settlement, is false and fraudulent, because not equal to ten per cent. per annum on the previous balance in his hands unaccounted for.

That the charge against himself in his fourth annual settlement of $540 00 for interest is false and fraudulent, because not equal to ten per cent. per annum on the previous balance in his hands unaccounted for.

That said administrator, Hook, collected very nearly all the debts inventoried by him as due to said estate, and by due diligence in discharge of his duty could have collected every dollar thereof.

That said Hook, after collecting the monies due the said estate did not report the same as in his hands to the county court; that he loaned out the said monies without authority of the court and without authority of law, and in his own private name and for his private benefit, and upon insufficient and illegal security; that he loaned generally the monies of the estate for ten per cent. interest per annum, compounded annually, & may have loaned all of it at that rate; that he used the money of the estate in buying and selling gold and otherwise speculating and trading for his private gain; that he deposited the monies of the estate in divers places in his private name and mixed it with his own funds and other funds, so it could not be traced or distinguished as monies of said estate, of all which transactions he made no return into court, and has rendered no legal account.

104 That each and every item in said several settlements, and each of them, made by said Hook, as administrator of said estate, with the county court of Callaway County, wherein he credits himself with commissions for performing his duty as administrator of Fielding Curtis, is false and fraudulent, because he did not perform his duty, and no administrator or trustee is entitled to commissions for disregarding the law & dealing in bad faith in such matters.

On the 24th September, 1862, said Zadoc Hook, as principal, made & delivered to the State of Missouri his official bond as public administrator of Callaway County, whereby he, as principal, and the other defendants in the above-entitled cause as his sureties, obligated themselves in the penal sum of $190,000 00 unto said State of Missouri, conditioned, that he, said Hook, as such public administrator of Callaway County, Missouri, should well and faithfully discharge his duties in his said office, and thereby the said Hook and said defendants, his sureties, agreed with the plaintiffs in this suit and these appearers, and all persons interested in said Fielding Curtis's estate, to duly administer the same, according to law, and pay to the distributees thereof the several amounts due to them, and each of them.

That all debts and demands due from said Fielding Curtis to any person have long since been paid by said administrator, Hook.

105 On the 24th September, 1862, said Hook had in his hands, as administrator of said Fielding Curtis, the whole distributable share of every person interested in said estate; that he did not and will not account for the same.

That owing to the want of communication between the residences of said distributees in Culpepper County, Virginia, growing out of the recent civil war, they were at the close of said war, and during the year 1865, almost wholly ignorant of the condition of the estate of said Fielding Curtis, and were besides in great pecuniary distress. While they were in this condition said Hook, in said year 1865, came to the State of Virginia, and by concealing the truth of the case, and by misrepresentations which he had conveyed to them, prevailed on them, fraudulently, to settle with him for their interest in said estate; that said settlement was made with him on the belief that the then available assetts of said estate, at the time of said settlement, was only about $30,400 *dollars;* that is, that one-eighth of the whole available assetts of said estate, at that time, was only about $3,800 *dollars;* and if a greater sum could be realized, it could only be effected after a long time and by very prudent management and indulgence to debtors of the estate, and by surrendering wholly into said Hook's hands the doubtful assetts, and even then the realizing a greater sum than $30,400 *dollars* was
106 uncertain. That said Hook falsely represented that he could not tell what the said estate was worth, but that as near as he could approximate it, one-eighth of said estate was worth about $3,800 *dollars*, and falsely represented that said estate had suffered serious losses; how much he would not say; and falsely represented that there were a great many debts due to the said estate which he expected to lose, and falsely represented that he could obtain credit for a great many debts as lost on the final settlement of said estate; that possibly he might, in the course of years of indulgence and management, realize more than $30,400 *dollars*, but it was even then uncertain; and falsely represented that as to the other assetts of said estate over and above $30,400 *dollars*, it was almost indispensable, in order to realize anything out of them, that they should be surrendered to him for his own benefit.

That said Hook, neither by himself nor his agents ever rendered any account to said distributees, or any of them, or balance sheet, or statement showing the condition of said estate or any particulars or items in regard to it; that said Hook concealed from them the true condition and value of said estate; that by misrepresentation and deceit and by concealment of the truth, said Hook induced them to settle with him by paying them their shares, respectively, considering said estate as
107 worth forty thousand dollars, he, said Hook, representing that he thought he could realize that amount out of the assetts if settlement was made with him on that basis, though it would require care and time to effect it.

That said Hook paid to Abraham Curtis, brother of said Fielding, in the summer of 1865, five thousand dollars in full of his distributable share of said estate, and took his receipt in full.

That said Hook paid about the same time, on account of the distributable shares of Abiah Guinn, Tandy W. Guinn, Matilda Collins, & Elizabeth Hill, wife of Wesley Hill, four-sevenths of five thousand dollars, and took from the parties interested a receipt in full.

That said Hook, about the same time, paid to Henry B. Curtis and Abraham C. Curtis, sons of Elijah Curtis, who was a brother of said Fielding, the sum of twenty-five hundred dollars, being two-fourths of five thousand dollars, and took their receipt in full of their shares of said estate.

Said Hook paid also to Lafayette M. Latham, administrator, under the laws of Virginia, of said John J. Curtis, deceased, son of said Elijah, in 1865 or 1866, the sum of twelve hundred & fifty dollars, and

took his receipt in full of the distributable share of said John J. Curtis in said estate.

That all of said receipts in full and all papers made by the parties aforesaid to said Hook as evidence of said settlement with said
108 several parties, and each of said papers, whatever they were, be they receipts, releases, acquittances, or transfers, was procured by said Hook by fraud, covin, and misrepresentation, and are null and void. At the time when said several settlements and each of them was made, the estate of said Fielding Curtis was worth more than said Hook or his agents represented. That said estate was at that time worth more than $65,000 *dollars*, and this said Hook well knew, and well knew that all his representations in regard to the condition and value of said estate were, and each of them was, untrue.

And now, in conclusion, these appearers do charge that the foregoing allegations of fact are and each of them is true, as in part they do personally know and as in other part they are informed and do verily believe.

And these appearers do now here claim to have an account of their several distributable shares taken according to their several rights and as may seem meet and as in duty bound, &c., &c.

And these appearers will ask, if necessary, to change, alter, or amend their present statement, and as in duty bound, &c, &c.

(Signed) GLOVER & SHEPLEY,
For said Appearers.

STATE OF VIRGINIA, *County of Culpepper:*

I, James B. Day, a notary public for the county of Culpepper, in the State of Virginia, do certify that Tandy W. Guinn, of the said county, this day personally appeared before me in the said county, and
109 made oath in due form of law that the facts stated in the foregoing statement of facts on his own knowledge are true, and those stated on information derived from others he believes to be true.

The words "plaintiffs" and "Va.," on 2d page, "and upon insufficient and illegal security," on 8th page, "he thought," on 13th page, "four-sevenths," on 14th page, interlined in place of "and Phares Guinn, five-eighths," erased, and "or 1866," on 14th page, all interlined before affidavit made.

Given under may hand and seal this 21st day of February, 1870.

[SEAL.] (Signed) JAMES B. DAY,
Notary Public.

And the answer to said statement of facts filed before the master and referred to in his report, is in the words and figures following, to wit:

Answer to statement of facts.

In the circuit court of the United States for the districts of Missouri.—In chancery.

ANN PAYNE, SUSAN CURTIS, & MARY GUINN, Plff's, *vs.* ZADOK HOOK ET AL., DEFENDANTS. } Consolidated suits in chancery.

Proceedings before Alexander Martin., esq., master in chancery, directed to *to* state an account in the above-entitled cause.

The defendants herein, saving and reserving all manner of exceptions

to the many gross errors, irregularities, and imperfections in the statement of *of* appearers filed in the above cause, and now here protesting that said appearers have no right whatever in the proceeding to enquire into the validity of said several purchases, releases, and acquittances in said statement alleged, nor to the relief therein prayed, come and answering said statement admit the decease of the said Fielding Curtis, and that said estate of the said Fielding Curtis was the sum of sixty-six thousand dollars; and that the defendant, Zadok Hook, the public administrator of Callaway County, took said estate into his hands for administration, and returned an inventory of the property thereof.

They further admit that said several annual settlements were made as charged, and that said Hook has made no other settlements than the four settlements so alleged in said statement.

But these defendants deny that said several settlements were, or either of them was, erroneous, false, or fraudulent.

They deny that he did not, in said settlements, charge himself with the full amount of interest due to said estate, or that said Hook received ten per cent. interest on almost all the debts due to said estate.

They deny that he failed on either of said settlements to charge himself with the full amount of money in his hands, or that he never accounted for a higher rate of interest in any of said settlements than six per cent. interest.

They deny that he should have charged himself with ten per centum per annum interest on the whole amount of money in his hands.

They deny that his said settlements are and each of them is fraudulent in not adding ten per centum per annum interest to the amount in his hands, or that his first annual settlement is fraudulent because the same was not equal to ten cent. per annum, or that he received ten per interest on the monies in his hands.

They deny that his 2d annual settlement was fraudulent, because the same was not equal to ten per cent. per annum on the previous balance.

They deny that the charge of $1,460 for interest on his third annual settlement is false and fraudulent, because not equal to ten per cent. per annum on the previous balance in his hands.

They deny that the charge of $540 00 for interest in his 4th annual settlement is false and frudulent, because not equal to ten per cent. per annum on the previous balance in his hands.

They deny that said Hook, by due diligence, could have collected every dollar of said estate, or such debts of said estate as were insolvent.

They deny that said Hook did not report such sums of money and debts as he collected of said estate as in hands to the county court.

They deny that he loaned out said money without the authority or approval of said court or the judges thereof, or that he made loans of the money of said estate for his own private benefit, or that he loaned generally the money of the estate for ten per centum compound interest, although in some instances such loans were so made at said rate.

They deny that he used the money of said estate in buying and selling gold, or otherwise speculating or trading for his own private gain.

They admit that he made deposits of the money of the estate in his own name, but with no criminal or improper intent, and with no view to use the same for his own gain or profit. He denies that the same was mixed or commingled with his own so that the amount belonging to said estate could not be easily seperated and appropriated to the

proper uses and benefit of said estate. They deny that he has failed to render a legal and proper account of all the monies and funds of said estate.

They deny that each or any item in said several settlements or any one of them so made with said county court of Callaway County, wherein said administrator credits himself with commissions, is false or fraudulent by reason of said falsely alleged failure of duty.

They admit the execution of the official bond as charged, in the penal sum as stated, for the due and faithful performance of his duties as administrator.

They deny that owing to the want of communication between the residence of the appearers, that said distributees were ignorant of the condition of the estate of Fielding Curtis, or that they were in great pecuniary distress, or that said Hook did, in the year 1865, come
113 to the State of Virginia, and by concealing the truth of the case, or by misrepresentation, which he had conveyed to them, as falsely alleged in said statement, prevailed on the said appearers fraudulently to settle with him for their interests in said estate, or that such settlement was made with him on the belief that the then available assetts of said estate, at the time of said settlement, were only about $30,400, or that the one-eighth of the whole available assetts of said estate at that time was only about $3,800 00 to the share.

They deny that said Hook falsely represented that he could not tell what the estate was worth, but that as near as he could approximate the one-eighth of said estate was about $3,800 00.

They deny that said Hook falsely represented that said estate had suffered serious losses, or that he falsely represented that there were a great many debts due the estate which he expected to lose, or that he falsely represented that he could obtain credit for a great many debts as lost on the final settlement of said estate, and that possibly he might, in the course of years of indulgence, realize more than $30,400, but that it was then uncertain.

They deny that said adm'r stated to said distributees, or procured others so to do, that it was almost indispensable, in order to realize anything out of the assetts in excess of $30,400, that they should be surrendered to him for his own benefit.

114 They deny that said Hook had any agents employed for the purpose of procuring said interests.

They deny that said Hook concealed from said appearers the true condition or value of said estate, or that, by misrepresentation or deceit, or *or* by concealment of the truth, said Hook induced them, or either of them, by himself, or through others, to transfer their shares, or either of their shares, or execute said releases and acquittances, or to settle with him, or that he represented that he thought he could realize that amount out of the assetts if settlement was made with him on that basis, but that it would require care and time to effect it.

They deny that said several papers, releases, and contracts, so executed, as stated, or either of the same, were procured by fraud, covin, or misrepresentation.

They deny that said estate was worth more than was represented by said Hook.

They deny that any representation was made that said estate was worth the sum stated.

They deny that Hook well knew, or knew at all, or that any representation was untrue so made by the said administrator, and then defendants fully and explicitly deny all fraud or bad faith in any manner

whatever, or by any means whatever, as in said statement is alleged with respect to said several settlements, or in respect to said transfers, releases, and acquittances, so alleged to have been committed by said administrator.

And these defendants, further answering, state that it was and
115 is true that said estate of Fielding Curtis did sustain very heavy and serious losses, and was attended with much expense in the administration thereof, all of which amounted to nearly the sum of thirty thousand dollars; that said losses were upon original debts of the estate in part, and partly upon monies loaned by said administrator, as also upon investment in gold coin for the benefit of said estate, a particular account whereof is herewith exhibited, being the same as statement marked Exhibit C, attached to the deposition of said adm'r filed in this cause.

They further aver that the sum total to which said administrator is entitled to a credit in the taking of said account is the sum of seventy-five thousand ninety-nine $\frac{92}{100}$ dollars, which should, in justice and equity, be allowed. They aver that said administration upon said estate was in progress during the existence of a civil war, and that, in consequence of the exigency of the times, the debts of said estate, such as were paid, were paid in the currency of the Government and of the banking institutions of the country; that gold and silver, soon after the beginning of said administration, ceased to be a circulating medium, and that said adm'r was forced to receive the debts of said estate in depreciated paper. *They* avers that he acted to the best of his judgment in the disposal of the funds of said estate, and when an opportunity
116 offered he loaned such funds, and in such amounts as he could find borrowers therefor; that there were many lenders and but few solvent borrowers; and, believing that said currency would suffer greater depreciation, and finally become valueless, and not being able to reach Virginia during hostilities to pay the same to appearers, he did in good faith, in order to save the estate from loss, invest part of said funds in gold for the benefit of said estate, and not for his own private speculation; that the amount so invested bore no interest during said investment; and that the amount so invested was $23,324 80, upon which there was a loss of $8,184 75.

They aver that said Calla. County court remitted him to the exercise of his own discretion in the investment of the funds of said estate, and that he ought not in equity be held responsible for a simple error of judgment, not proceeding from any willful default, or from culpable negligence; that, under these extraordinary circumstances surrounding him, he did in good faith, and in the exercise of an honest discretion, act in the premises to the best of his judgment and ability. He avers that, as to charging interest against him on his various settlements, that said county court adjusted the rate of interest upon an equitable basis, allowing him reasonable time for receiving and paying out
117 monies of the estate; and, by taking into consideration the amount of the estate in his hands unproductive, and not bearing interest, and that, from the fact that all the funds of said estate were not loaned out, and that some debts were bearing six per cent., and other debts ten per cent., and yet others ten per cent. compound interest, said court charged against him such interest as the equity and justice of case would require.

They aver that the sum so paid by said Hook to each of said distributees for their said respective interests in said estate exceeded the value of a share of said estate in 1865, taking into consideration the

doubtful and deferred debts, and that in order to carry said negotiations into effect, said administrator had to borrow the sum of ten thousand four hundred dollars, the sum of five thousand dollars thereof being yet unpaid. They aver that said Hook did not enter into said arrangement or procure a transfer of said interests for the purpose of speculation, but in order to save himself from financial ruin; that said distributees were well aware of the true condition of said estate, and that they themselves proposed to receive the sum of five thousand dollars to each full share (a one-eighth) of said estate.

They aver that in good faith the said Hook, believing that he was the owner of said interests, proceeded to take real estate at high values in discharge of the debts of the estate, and for the space of several
118 years has held said real estate in hands unproductive, and useless he shall be able to sell the same at high prices, will lose by said settlement with said distributees.

They aver that the said Zadok Hook, by virtue of said releases, transfers, and acquittances, including the distributive shares purchased of the Wilhoit heirs, is now the owner in absolute right of four-eighths of said estate, and that said four-eighths of said estate so purchased by him ought not to be charged against him, nor any interest calculated thereon in the taking of the account in this cause.

They aver that said purchases were made in good faith, and that no fraud, deception, or artifice, or concealment was practiced upon any one of said distributees, but that they, and each of said distributees, did, without any inducements or persuasions, with a knowledge of the pecuniary condition and value of said estate, of his own judgment, so dispose of his said interest; that said Hook employed no one and paid no one to negotiate or consummate said releases, purchases, or acquittances, and that said purchases, releases, and acquittances so being made, without concealment, fraud, or misrepresentation, are valid and binding, and ought not to be set aside or annulled.

They further aver that all of said purchases, releases, and acquittances were negotiated and consummated long after, and had no connection with, several transactions and purchases and releases between
119 the complainants, Ann Payne, Susan Curtis, & Mary Guinn, as alleged in their several bills of complaint, and were distinct and independent transactions.

They now here proceed to state specifically the said several shares so purchased of the said distributees, to wit:

The share or interest of one-eighth belonging to Abraham Curtis; the share or one-eighth belonging to the descendants of Elijah Curtis—that is to say, the interests of Abraham C. Curtis, Henry B. Curtis, Benjamin W. Curtis, & John J. Curtis, sons of said Elijah, and sole descendants of said Elijah, who did before the decease of said Fielding, these being interested and owners of a one-eighth; also, to wit, the several interests of Abiah Guinn, Tandy Guinn, Milton Guinn, Alfred Guinn, Matilda Collins, formerly Matilda Guinn, Elizabeth Hill, formerly Elizabeth Guinn, sole descendants of Betsy Guinn, who died previously to the decease of said Fielding Curtis, who were altogether entitled to the one-eighth of said estate; also, to wit, the interests of Milton Wilhoit, Ezekiel Wilhoit, Curtis Wilhoit, Susan Hicks, formerly Susan Wilhoit, Nancy Austin, formerly Nancy Wilhoit, and Sarah Simms, formerly Sarah Wilhoit, nephews & nieces of said Fielding and Ezekiel Brooking, William Brooking, Curtis Brooking, Robert Brooking, James Brooking, & John Brooking, grand-nephews of said Fielding,
120 being altogether entitled to a one-eighth of said estate, as the sole

descendants of Sarah Wilhoit, formerly Sarah Curtis, a sister of said Fielding, who departed this life previously to the decease of said Fielding Curtis, deceased.

And to the end, therefore, that equity be administered in the taking of said account, and that said securities on said official bond be fully protected, as also the said principal, Zadok Hook, they ask that said $\frac{4}{8}$ of said estate be not taken into said account or in any manner charged against them, nor any interest thereon.

HENDERSON & HAYDEN,
For Defendants.

Zadock Hook, being first duly sworn, says the matters and things as stated in the foregoing he believes to be true.

(Signed) ALEX. MARTIN, *Master.*

And the exceptions of defendants to the report of the master are in the words and figures following, to wit:

Exceptions of defendants to master's report, filed before master.

In the United States circuit court.

ANN PAYNE ET AL.
vs.
ZADOCK HOOK ET AL.

Now comes the defendant, Hook, for himself and his securities, co-defendants, and excepts to the report of the master in this cause, as follows:

1st. They except to the balance of $149,199 69, found on page 39 of said report, because the interest charged is too high, because the account is compounded, because no credits are allowed for losses.

2d. They except to the balance found on page 48 of the report,
121 being a balance of $140,243 20, because the credits for uncollected debts is incorrect and no credits are given for losses.

3d. They except to the balance found on page 49 of said report, being a balance of $68,590 10, because the debits in said account are too great, because no credit is given for losses and the interest is excessive.

4th. They except to the balance found on page 50 of said report, being a balance of $52,463 62, alleged to be due the heirs or distributees of said estate, because the said distributees had released and acquitted the adm'r and nothing is due them, because all the distributees on said page 50, except Mrs. Payne, Susan Curtis, and Mary Gwinn, were not parties to the original suit.

5th. They except because the decree upon which said report is based is illegal and unjust.

(Signed) ZADOK HOOK.

And at the April term of said circuit court for the districts of Missouri, begun and held at the city of St. Louis, in said districts, on Monday, the fourth day of April, in the year of our Lord eighteen hundred and seventy, the following further proceedings were had in this cause on Monday, the eleventh day of April, in said last-mentioned year, to wit:

Exceptions of def'd'ts to master's report & petition for rehearing filed.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.

SUSAN CURTIS, COMPLAINANT,
122 *ag'st*
ZADOK HOOK ET AL., DEFENDANTS.

MARY GUINN, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.

} In chancery, consolidated.

This day come the defendants, by their solicitors, and file their exceptions to the report of the master in this cause, and also file their petition for a rehearing of this cause for the reasons and causes in said petition set forth.

And the said exceptions, so filed on said last-mentioned day, is in the words and figures following, to wit:

Exceptions of defendants to report of master filed in court.

ANN PAYNE & OTHERS, COMPLAINANTS,
vs.
ZADOK HOOK & OTHERS, DEFENDANTS.

} In chancery.

In circuit court of United States for district of Missouri.

And now come the defendants and respectfully represent to the court that the report of the master pro hac vice in this cause, to wit, Alexander Martin, filed in this court on the 7th day of April, 1870, is erroneous and defective in many particulars and ought not to be affirmed, for the reasons hereinafter stated.

1st. He has erroneously assumed the powers and original juris-
123 diction of a court of equity by receiving the petition of Abiah Guinn, Tandy W. Guinn, and eight other persons who are not parties to this suit, and by adjudicating the questions of heirship, fraud, the sufficiency of letters of administration, and the legal character and effect of certain acquittances and releases executed by said petitioners to the defendant Hook.

2d. He has erroneously assumed to try and determine questions not embraced in the order of this court, and which were not referred to him for his opinion or action.

3d. The report of the master assumes erroneously to set aside certain releases to Zadok Hook, executed by the said Abiah Guinn & others who appeared before him, and to find a large indebtedness existing against the defendants in favor of said parties.

4. The master aforesaid erroneously charges in favor of said parties and against the defendant, Hook, administrator of the estate of Fielding Curtis, a rate of interest equal to ten per cent. per annum, to be compounded, when the evidence taken and adduced before him, and all the evidence, abundantly establishes the fact that said Hook did not and could not have received a rate of interest exceeding six per cent. per annum on the funds in his hands.

5. The said report is defective in that it fails to allow and credit said

Hook with divers and sundry losses incurred by him in the col-
124 lection of the inventoried demands due to said estate.

6. It is defective in that it fails to allow and credit said Hook with divers and sundry losses incurred by him as administrator of said estate in the purchase of gold for said estate, and in the failure to collect large sums of money loaned by said administrator under the instructions of the county court of Callaway County, and according to the law in such cases, a list of which losses is contained in the exhibit accompanying defendant's answer.

7. It is defective and erroneous in the fact that in the account stated in the report, the defendant, Hook, is not credited with his reasonable and proper commissions in and about the settlements and administration of said estate.

8. Said report fails to allow and credit said Hook with his reasonable expenses in and about the settlement of said estate, and for time and labor in and about its administration.

9. The report is erroneous in that the master states therein that he sets aside the acquittances of the new parties appearing before him, not upon the evidence presented by them, but because this court, in cases somewhat similar, had set aside the releases of Ann Payne, Susan Curtis, and Mary Guinn; and because he states therein that he charges a high rate of interest in favor of said parties, regardless of the admitted rates prevailing in Callaway County.

10. Defendants say that said report is erroneous in the fact,
125 first, that the calculations of interest made by the master are incorrect; second, the rate of interest is exorbitant and excessive; third, the balances brought down in the report against Hook, the administrator, are too great; fourth, the credits allowed Hook for payments, expenses, commissions, losses, and unavailable assets are insufficient; fifth, the interest allowed on credits and payments to distributees are incorrect and insufficient; sixth, an indebtedness against defendants is found in favor of persons not parties to this suit and not properly entitled to any distributive share of said estate of Fielding Curtis.

And, finally, defendants except to said report because the decree under which it is made is not founded on the evidence in the cause, is unjust to the defendants, and ought to be set aside until an account of the condition of said estate of Fielding Curtis, in June, 1865, can be taken, upon principles entirely just and equitable between the administrator thereof and the estate, in order that this court may determine the validity of the discharges executed by the distributees to said administrator.

And now, therefore, the defendants pray the court that said report be disapproved and held for naught, and that the court proceed to set aside the interlocutory decree heretofore rendered, and, on a reëxamination of said cause, the bill of complainants be dismissed and
126 the petition of the appearers or new-comers filed before the master be disregarded, and as in duty bound, &c.

HENDERSON & HAYDEN,
For Def'ts.

And the petition for rehearing filed by said defendants on said 11th day of April, A. D. 1870, is in the words and figures following, to wit:

Petition for rehearing.

In the circuit court of the United States for the districts of Missouri.

ANN PAYNE ET AL., COMPLAINANTS,
against
ZADOK HOOK ET AL., DEFENDANTS.
} Consolidated suits in chancery.

To the honorable the judges of the circuit court of the United States for the districts of Missouri in chancery sitting:

Your petitioners, the defendants in the above-entitled cause, now come and respectfully represent and show to the court, that in the interlocutory decree rendered in said cause, at the last term of this court, and in the proceedings in said cause, error has been committed, manifestly to the great detriment of your petitioners, the defendants therein; and to the end that equity be administered conformably to the rules and principles of this honorable court, they pray the court to rehear said cause and reëxamine the testimony upon which said decree was so rendered, and to enquire anew into said several matters of complaint in complainants' several bills of complaint, and of the said several errors as hereinafter specifically alleged, as follows, to wit:

Your petitioners are advised that said decree is defective and
127 erroneous, inasmuch as it does vacate and set aside the several transfers of complainants, Ann Payne, Mary Guinn, and Susan Curtis, of their distributable shares of the estate of Fielding Curtis to Zadok Hook; although it does not appear from any evidence in said cause that said Hook was guilty of any fraud, artifice, misrepresentation, or false representation concerning said estate, or the value thereof, or that he concealed or failed to disclose such knowledge as he possessed concerning the condition and value of said estate at the time of said purchase, and although it fully appears from said evidence that he purchased said interests for the valuable consideration of five thousand dollars paid, respectively, to each of complainants, and that said purchase was made at their own offer and upon their own voluntary proposition so to sell and transfer the same to him, and neither was there any evidence to show that said distributable shares were, at the time of said purchase, worth exceeding said sum of five thousand dollars, so paid for each at a cash value, purchaser taking and assuming all the risk of collecting and securing the suspended and doubtful debts of said estate, as shown by said evidence.

And your petitioners are advised that said decree is defective and
128 erroneous also in this, to wit: For it appears, from the evidence adduced in said cause, upon the hearing thereof, that said administration was in progress during the existence of the late civil war, and that in consequence of the existence of hostilities and the unsettled condition of affairs, and from the fact that complainants resided within the confederate lines, that it was impossible as well as unlawful for said administrator to hold intercourse with them or pay them their said distributable shares; and it further appears that it was absolutely dangerous to life to keep in one's possession money in Callaway County, when said administration was pending, and that it could not be loaned even without interest readily. And it further appears from said evidence that the Callaway County court did remit the said Hook to the exercise of his own best discretion in the management and control of the said fund in his hands; and it further appears, that so being forced

to manage said fund, and without the ability to pay it over to said distributees, said administrator did adopt in good faith by loans and investments in gold such investment as prudent, now considered safest, as he thought would best preserve the estate from loss; nor does it appear that said fund has sustained any losses whatever resulting from the fraud, wilful default, or negligence of said Hook; but, on the contrary, the said losses did result and grow out of the extraordinary
129 condition of affairs consequent upon civil war, and because it appears from said evidence that said Hook did account for all interest received by him, as will appear upon the inventory and his said several settlements with the Callaway County court, as also for the principal sum of said estate. But said decree wholly disregards said losses, amounting nearly to the sum of twenty-five thousand dollars, and directs an account, without allowing a deduction thereof, which oughtin equity to have been done.

And they allege further that said decree is defective and erroneous in this, to wit: That said decree charges said Hook with the entire amount of said estate, less the slaves, as returned upon the inventory, and directs that he be compelled to account therefor, with interest added annually to the principal sum, at the rate of ten per centum per annum, without any time allowed for receiving and paying out monies, when the evidence in the cause fails wholly to show the slightest evidence of bad faith, fraudulent conduct, wilful neglect, or any neglect of duty, or any misfeacance or malfeasance in the conduct or acts of said administrator, and, on the contrary, the evidence shows that said administrator acted in good faith and with the honest purpose of preserving said estate from the calamities of war.

And they further allege that said decree is defective and erro-
130 neous in this, to wit: That said decree charges him, said Hook, and defendants, with interest on monies, at the rate of ten per centum per annum, compound interest, before the same could possibly have come to his hands in the process of administration, that is to say, on the hire of slaves which did not accrue, nor was the same received until long after the date of the said inventory.

And they further allege that said decree is defective and erroneous in this, to wit: That said decree charges interest on interest on the sum of four thousand dollars or thereabouts, charged on the inventory, when there was no proof whatever that said interest bore interest, and when the rate of interest directed to be cast thereon is ten per cent., annually compounded, although one of the notes in said inventory bore but six per cent. interest per annum. And also in this, to wit: That said decree directs that interest at the rate of ten per centum per annum be annually added to the balance on the annual settlements from the date of said inventory until a final decree shall be entered in said cause, when it appears from the evidence in said cause that said administrator has, since his said purchase or settlements with said complainants, converted the interest-bearing debts into real estate, upon the faith that said settlement, so made with said heirs, gave to him the full control and disposition of said assetts, and that said administrator in settling with
131 the debtors of said estate has taken real estate in satisfaction of the debts and assetts of said estate, releasing the debtors from their liability for said claims so due the estate, which said real estate so taken has been so taken at a valuation far beyond its cash value, and has been unproductive and subject to heavy taxes and repairs, and these defendants charge that it is contrary to equity to charge said Hook and his securities, since the date of said contract and settlement,

with the fair value of said notes and assetts as so much money in the hands of said administrator, and to charge thereon interest at the rate of ten per centum per annum annually, to be compounded, or any other rate of interest whatever, said contract so made with said complainants being induced and consummated at complainants' own voluntary proposition and request.

And also said decree is defective and erroneous in this, to wit: The said complainants' bills of complaint are brought to set aside, surcharge, and falsify the said several settlements of Hook made with the Callaway County court, alleging that the same are fraudulent in this, that said Hook failed to account for interest on monies of said estate alleged to have been accrued to said estate, and to have been received by said Hook, for which he failed to account in said settlements, and the defendants in their answer deny each of said allegations, and put in
132 issue the truth of each of said several allegations. These defendants say that there was no evidence whatever adduced to show the truth of said several allegations, and they say that said several settlements so made with said Callaway County court are judgments, and have the force and effect thereof, and are to be taken as true prima facie, and the burden of proof rested with complainants to show fraud or mistake therein, which they have not in any manner offered to do, and said settlements, so having the effect and verity of judgments, must be taken as conclusive on the subject of said administrator's accounts as to interest and principal, in the absence of evidence of fraud or mistake therein, and that it was erroneous to set the same aside and direct an account of said estate.

Your petitioners therefore pray the court that for the said several errors the said decree be wholly set aside, and that upon a rehearing of this cause the said several transfers be sustained, and the several bills of complaint of complainants be dismissed, and that defendants recover their costs, &c.

(Signed) HENDERSON & HAYDEN,
For Defendants.

And at said last-mentioned regular stated term of said circuit court, begun and holden as aforesaid, the following further proceedings took place in this case on Wednesday, the eighteenth day of May, in said last-mentioned year, to wit:

133 ANN PAYNE *ag'st* ZADOK HOOK ET AL.
SUSAN CURTIS *ag'st* ZADOK HOOK ET AL.
MARY GUINN *ag'st* ZADOK HOOK ET AL.
} In chancery.—Consolidated.

Final decree.

ANN PAYNE, SUSAN CURTIS, MARY GUINN, original plaintiffs, and Abiah Guinn, Tandy W. Guinn, Matilda Collins, Wesley Hill and Elizabeth Hill, his wife, Henry Gambs, adm'r of Abraham Curtis, dec'd, Henry Gambs,

adm'r of John J. Curtis, dec'd, Henry Gambs, adm'r of Phares Guinn, dec'd, Henry B. Curtis, and Abraham C. Curtis, plaintiffs, who appeared by permission of the court to take the benefit of the interlocutory decree herein before the master,

against

ZADOK HOOK AND OTHERS, DEFENDANTS.

The above causes, as consolidated, came on to be heard at this term on the bills, answers, replications, interlocutory decree, pleadings before the master, the master's report and proofs in the cause; also upon the several exceptions to the master's report filed by defendants, and upon a motion by the defendants for a rehearing of the cause on the
134 merits, and by consent of parties, all said several matters were taken up together and argued by counsel for said parties, plaintiffs and defendants, and duly considered by the court, and upon consideration thereof it was ordered, adjudged, and decreed as follows:

That the said motion for rehearing of said cause be overruled.

That the said several exceptions to the master's report, and each of them, be also overruled.

The said report having been made in strict conformity to the interlocutory decree heretofore entered in the cause, is hereby approved.

Yet the court, being further advised by the report and evidence before the master, as reported by him, does, of its own motion, reconsider the matter of the interlocutory decree heretofore made, so far as the rate of interest is concerned, and in place of requiring the account against the defendants to be stated at the rate of ten per cent. interest, with annual rests, orders and adjudges the account to be stated at the rate of eight per cent. interest, with annual rests.

And proceeding on this basis of taking the account, all the data therefor being before the court, adjudges that on the 4th day of April, 1870, there was due to the said plaintiffs altogether the sum of forty-four thousand and eight hundred and seventy-three dollars and thirty-five cents, ($44,873 35,) to be distributed among them as follows, to wit:

To said Ann Payne, eight thousand one hundred and seventy-
135 nine dollars, ninety-three cents, ($8,179 93.)

To Susan Curtis, eight thousand one hundred and seventy-nine dollars, ninety-three cents, ($8,179 93.)

To Mary Guinn, eight thousand one hundred and seventy-nine dollars, ninety-three cents, ($8,179 93.)

To Henry Gambs, adm'r of Abram Curtis, dec'd, eight thousand two hundred and twenty-seven dollars and eleven cents, ($8,227 11.)

To Abiah Guinn, nine hundred and seventy-nine dollars and eight cents, ($979 08.)

To Tandy W. Guinn, nine hundred and seventy-nine dollars and eight cents, ($979 08.)

To Matilda Collins, nine hundred and seventy-nine dollars and eight cents, ($979 08.)

To Wesley Hill and Elizabeth Hill, his wife, nine hundred and seventy-nine dollars and eight cents, ($979 08.)

To Henry Gambs, adm'r of Phares Guinn, dec'd, nineteen hundred and thirty-six dollars and sixty-eight cents, ($1,936 68.)

To Henry Gambs, adm'r of John J. Curtis, dec'd, two thousand one hundred and thirty-nine dollars, ninety-three cents, ($2,139 93.)

To Henry B. Curtis, two thousand and fifty-six dollars and seventy-

six cents, ($2,056 76,) and to Abraham C. Curtis, two thousand and fifty-six dollars and seventy-six cents, ($2,056 76.)

And it is ordered, adjudged, and decreed that the said defendants, Zadok Hook, William Carrington, Samuel Watson, Monroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, John West,
136 Thomas H. Beeding, Thomas J. Baker, Martin Baker, John Baker, William J. Bedsworth, Henry Larimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, and John A. Adkins, pay unto the said plaintiffs the said sum of forty-four thousand eight hundred and seventy-three dollars and thirty-five cents, ($44,873 35,) to be distributed as aforesaid, with interest from the 4th day of April, 1870; and also the costs in this behalf expended, including in such costs the sum of four hundred dollars, which is hereby allowed to said master, Alexander Martin, esq., for his services as such master, and that execution be issued therefor.

And afterwards, to wit, on Saturday, the twenty-first day of May, in the year eighteen hundred and seventy, the following further proceedings were had in this cause:

Filing of motion to set aside final decree.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOOK HOOK ET AL., DEFENDANTS.
SUSAN CURTIS, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
MARY GUINN, COMPLAINANT,
ag'st
ZADOK HOOK ET. AL., DEFENDANTS.
} In chancery.—Consolidated.

137 This day came the defendants, by their solicitors, and filed their motion in writing to set aside the final decree heretofore entered herein, for the reasons and causes in said motion set forth. And the court having examined said motion, and being duly advised of and concerning the same, now orders that said motion be, and the same is hereby, overruled; and thereupon said defendants filed their petition for leave to appeal from said final decree to the Supreme Court of the United States.

And the said motion, so filed by said defendants, on said last-mentioned day, is in the words and figures following, to wit:

Motion to set aside final decree.

In the circuit court of the United States for the districts of Missouri.
In chancery sitting.

ANN PAYNE, SUSAN CURTIS, MARY GUINN, original plaintiffs; Tandy Guinn Abiah Guinn, et al., appearers before Alex. Martin, master in chancery,
against
ZADOK HOOK ET AL., DEFENDANTS.

The defendants come and move the court to set aside the final decree entered in the above-entitled cause, for the following reasons:

Because said decree is contrary to equity.

Because from the evidence adduced in said cause upon the hear-

138 ing thereof, the decree should have been entered for the defendants.

Because the court refused to set aside the interlocutory decree in said cause, for the reasons set forth in defendant's petition for a re-hearing of said cause.

Because the court disallowed the exceptions filed to the master's report in said cause.

Because the court by its interlocutory decree set aside and vacated the settlements of Zadok Hook, adm'r of Fielding Curtis, deceased, set out in the original bills filed in said cause made with the Callaway County court, without any proof of fraud, error, or mistake therein being adduced upon the trial of said cause or before said master in chancery.

Because there was no evidence shown that Hook, the adm'r, in his dealings with the plaintiffs or appearers, was guilty of fraud or suppression of any superior knowledge possessed by him concerning the value of the estate; on the contrary, it does not appear that he made an unconscientious bargain, but that said estate of Fielding Curtis, during the existence of the war, had suffered heavy losses, and that the settlement made with said heirs was so made at their own proposition and for the sum proposed by them, and not for the purpose of speculation on the part of said Hook, but to save himself and securities from financial ruin.

Because it was contrary to equity to charge said adm'r, during the existence of the civil war, with any rate of interest as a penalty in
139 favor of the plaintiffs and appearers, who were, during said period, alien enemies.

Because said complainants and appearers, after long acquiescence in the contracts made by them, being sui juris, and under no disability, and having full knowledge of all the facts, have no right to a decree setting aside said contracts.

Because there was no evidence to justify the imposition of eight (8) per centum per annum, compound interest, against said Hook and the other defendants, his securities.

Because said interest is charged from the date of said inventory to the final decree, without one moment's time for receiving funds of the estate or paying same out.

Because it is calculated upon losses of the estate long after said losses accrued, and the defendants are likewise charged with the loss.

Because it is calculated on the entire estate, long after the date of the contracts and acquittances with the heirs, and after five years' acquiescence by them in the said acquittance, and after said Hook had converted the suspended debt of said estate into real estate, at exhorbitant value, believing that he was the owner thereof, and to charge him and his securities with 8 per cent. compound interest, under such circumstances, is a grievous hardship. From the evidence in said cause it is shown that a great part of said funds bore no interest;
140 that the sum $23,000 of the same was invested in gold, under an honest belief of the rapid depreciation of Treasury notes; that said investment was not made for the private speculation of said adm'r. It appears also that said adm'r in good faith loaned out some of said funds, and the borrowers became insolvent. It also fully appears that the investment so made in gold was considered the safest investment by the best financiers during the war, and that said Hook in good faith acted to the best of his judgment, considering the unparalleled state of affairs surrounding him; he ought not to be charged for said losses, nor

for interest thereon, having been remitted to the exercise of his own discretion in the managment of said estate by the county court of Callaway County. If, under the circumstances, he was guilty of an error of judgment, in which there was no willful delinquency or gross negligence, he should not be visited with the extreme vigour imposed upon a corrupt maladministration of the trust fund.

Because Hook, being an administrator, appointed under the laws of Mo., it was his duty to collect and hold the money of the estate, and pay the same over to the heirs and distributees of said estate. He did pay those whom he could reach, residing within the federal lines, but the complainants and appearers, he could not reach, they residing
141 within the confederate lines, and with whom it was not only impossible but absolutely unlawful for him to hold intercourse; and the complainants and appearers, being alien enemies, have no right in equity to claim interest from said Hook, as a penalty for refusing to account to them for such period caused by the war, nor have they a right to claim or demand from him on their respective distributive shares any amount of interest whatever. The settlements of Hook with the Callaway County court not being impeached for error, fraud, or mistake, are prima facie evidence of the interest due on the whole of the estate, the said question of interest having been passed upon in said settlements by said Callaway County court, which, having full and complete jurisdiction over said administrator in the settlements of his accounts, as such, they are to be taken as true, there being no evidence that he received upon the whole estate any greater amount of interest than the whole amount of interest charged against him in his said several settlements.

Because said parties, who appeared before said master in chancery, and prayed an investigation into the validity of the several contracts by them made with said Hook—which said contracts were wholly seperate and disconnected from the original cause of action—ought not to have been permitted to claim the benefits of the final decree in said cause.
142 The subject-matter of their settlement of facts being in the nature of an original bill in equity, which these defendants claim the right to have enquired of by the court in the exercise of its original equity jurisdiction, conformably to the usual proceedings in this court, and said final decree, so far as the same affirms the validity of said proceedings, in regard to said appearers, is wholly erroneous, and ought to be set aside.

Because although this court has, by its final decree herein entered, found in the hands of Hook, the administrator, the amount specified in said decree, yet no decree can or ought to be entered against the other defendants, his securities, for that the said Hook, administrator, is the proper custodian of said fund until the same is ordered to be distributed and paid over to the parties thereto of right entitled, and so being in the proper custody of said Hook as administrator of said estate, there cannot be any breach of said bond of said Hook, until he fails to obey said order, and said securities are not liable, except for such breach, and upon the finding of said breach, a common-law judgment for the whole penalty must be entered, with award of execution, for the damages found to be due upon said breaches assigned.

Because said securities are not liable by the terms, or stipulations, or conditions of their said bond for imaginary values or interest
143 penalties imposed upon Hook, but they are liable, simply and only, for the funds of the estate, whether of principal or interest, or both, which said Hook has failed to account for, if any, on his settle-

ment. The said conditions of said bond do not include the payment of penalties imposed on the adm'r for failure or neglect of duty. The plaintiffs and appearers, before they could be equitably entitled to the decree and to a recision of said contracts so made by them, must be willing to do equity, and although they acquiesced in said contracts and acquittances for the space of from 3 to five years after the negotiation of the same, and although said acquittances were executed at their own voluntary proposition and request, and they received the full consideration they demanded, they now receive under the final decree, not the estate and interest so transferred by them in 1865 to said Hook, but also claim and receive under said decree 8 per centum compound interest on said estate and on the losses, after the making of said contract to the date of the final decree, which is not only a great hardship, but an overwhelming disaster to the securities, whom it is not pretended are otherwise than perfectly innocent of any wrong, and should be protected from loss, inasmuch as the plaintiffs and appearers by
144 their own contract and act placed the whole estate, being the suspended debt, at the disposal of Hook as owner, who, in the faith that he was such, soon after the making thereof, converted the said suspended debt into real estate, which has not produced any rate of interest, but has been wholly unproductive.

(Signed) HENDERSON & HAYDEN,
For Defendants.

And afterwards, to wit: on Saturday, the twenty-eighth day of May, in the year A. D. eighteen hundred and seventy, the following further proceedings were had in this cause:

Appeal allowed.

ANN PAYNE, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
SUSAN CURTIS, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
MARY GUINN, COMPLAINANT,
ag'st
ZADOK HOOK ET AL., DEFENDANTS.
} In chancery.—Consolidated.

This day come the defendants, by their solicitors, and present to the court their petition, heretofore filed herein, praying an appeal to the Supreme Court of the United States from the final decree rendered herein, and, on consideration thereof, it is ordered by the court
145 that said appeal be and the same is hereby allowed.

And thereupon, said defendants file their bond for the costs of such appeal, in the sum of two thousand dollars, which bond is approved by the court, and ordered to be made part of the record herein; said bond being for costs only, the appeal now allowed not operating as a stay of the execution heretofore ordered by said decree to be issued against said defendants.

And said bond of appeal, so filed by said defendants on said last-mentioned day, is in the words and figures following, to wit:

Bond of appellants.

UNITED STATES OF AMERICA,
Districts of Missouri.

In the circuit court of the United States for the districts of Missouri.

ANN PAYNE, SUSAN CURTIS, MARY GUINN, original complainants; Abiah Guinn, Tandy W. Guinn, Henry Gambs, adm'r of Phares Guinn, dec'd, Henry Gambs, adm'r of Abraham Curtis, dec'd, Henry Gambs, adm'r of John J. Curtis, dec'd, Matilda Collins, Elizabeth Hill, Henry B. Curtis, Abraham C. Curtis, appearers before Alex. Martin, master in chancery,

against

Zadok Hook, Henry Larimore, Joseph
146 Fisher, *defendants;* Samuel Watson, Jeremiah N. B. Neill, Monroe Sampson, Isaac F. Coons, Samuel A. Trimble, William H. Trimble, John Baker, Martin Baker, William J. Bedsworth, Thomas J. Baker, John A. Adkins, Elisha Blackwell, John A. Comer, William Carrington, Thomas H. Beeding, John West, defts.

Consolidated suits in chancery.—In chancery, on appeal.

Know all men by these presents, that we, Zadok Hook, Henry Larimore, Joseph Fisher, Jeremiah N. B. Neill, Monroe Sampson, Isaac F. Coons, Samuel A. Trimble, William H. Trimble, John Baker, Martin Baker, Thomas J. Baker, Elisha Blackwell, John A. Comer, Thomas H. Beeding, William Carrington, as principals, and Thomas B. Nesbit and Thomas B. Harris as securities, are held and firmly bound unto Ann Payne, Susan Curtis, Mary Guinn, Henry Gambs, adm'r, of the estate of Abraham Curtis, Abiah Guinn, Tandy W. Guinn, Matilda Collins, Elizabeth Hill, Henry Gambs, adm'r of the estate of Phares Guinn,
147 Henry Gambs, adm'r of the estate of John J. Curtis, dec'd, Henry B. Curtis & Abraham C. Curtis, in the sum of two thousand ($2,000) dollars, for the payment of which we bind ourselves and each of us jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 29th day of May, A. D. 1870.

Whereas the defendants in the above-entitled cause have prayed for and been allowed an appeal to the Supreme Court of the United States, to reverse the decree rendered in said cause by the circuit court of the United States for the districts of Missouri, at the April term, A. D. 1870, of said circuit court:

Now, therefore, the condition of this obligation is such, that if def'ts, William J. Bedsworth, John West, Zadok Hook, Henry Larimore, Joseph Fisher, Samuel Watson, Jeremiah N. B. Neill, Monroe Sampson, Isaac F. Coons, Samuel Trimble, William H. Trimble, John Baker, Martin Baker, Thomas J. Baker, John A. Adkins, Elisha Blackwell, John A. Comer, William Carrington, Thomas H. Beeding, their heirs, executors, and administrators, shall well and truly prosecute said appeal to effect and answer all damages and costs, if they shall fail to make good their

appeal, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

ZADOK HOOK. [SEAL.]
HENRY LARIMORE. [SEAL.]
148 JOSEPH FISHER. [SEAL.]
J. N. B. NEILL. [SEAL.]
MONROE SAMPSON. [SEAL.]
ISAAC F. COONS. [SEAL.]
S. A. TRIMBLE. [SEAL.]
WILLIAM H. TRIMBLE. [SEAL.]
JOHN BAKER. [SEAL.]
MARTIN BAKER. [SEAL.]
THOMAS J. BAKER. [SEAL.]
E. H. BLACKWELL. [SEAL.]
JOHN A. his + mark. COMER. [SEAL.]
THOMAS H. BEEDING. [SEAL.]
WILLIAM CARRINGTON. [SEAL.]
THOMAS B. NESBIT. [SEAL.]
THOMAS B. HARRIS. [SEAL.]

Witness to signature of John A. Comer—
W. B. THOMPSON.

148[1] And afterwards, in vacation of said circuit court, on Monday, the 12th day of September, A. D. 1870, the following further proceedings were had in this cause, to wit:

Agreement for appeal filed by counsel.

ANN PAYNE, SUSAN CURTIS, AND MARY GUINN, original plaintiffs, and Abiah Guinn and others, plaintiffs, who afterwards appeared to the master, *ag'st* ZADOK HOOK ET AL. } In chancery.—Consolidated.

This day come the parties herein, by their respective solicitors, and file an agreeement in writing, specifying the papers and proceedings used in the hearing of this cause, and agreeing that such papers and proceedings be included in the transcript, to be certified to the Supreme Court of the United States, under the appeal heretofore granted herein.

And the said agreement, so filed on said last-mentioned day, is in the words and figures following, to wit:

Agreement of counsel for appeal.

In cir. court of the U. States, dist's of Mo.

ANN PAYNE, SUSAN CURTIS, MARY GUINN, original plaintiffs, & Abiah Guinn & others, who appeared before the master, *vs.* ZADOK HOOK ET AL.

It is ordered by the court that a transcript of the bills and answers and schedule of bad debts annexed, and replications and state-
148[2] ments of facts and answers to said statements, and other plead

ings filed by parties appearing before the master, and his report and all evidence of the parties original & afterwards appearing, and all exceptions to the master's report filed before the master, and filed before the circuit court; and the defendants' petition for rehearing, and the motion to set aside the interlocutory decree, and the motion to set aside the final decree, and all the orders of the court in said cause; that is to say, first, on the part of the complainants: (1.) The bond of the said Zadok Hook as public administrator of Callaway County, Mo., dated Sept. 24, 1862. (2.) The transcript of the record of the proceedings of Zadok Hook, public adm'r of Callaway County, Mo., in the matter of the estate of Fielding, dec'd, filed in the cause Apr'l 7, 1870. (3.) The depositions of Abiah Guinn, and also of Geo. E. Marshal, Susan Curtis, Peter J. Norris, Mary Guinn, John J. Payne, Samuel R. Rixey, Fayette M. Latham, which depositions were filed in this court Ap'l 7, 1870; also the Exhibit No. 1, endorsed by Jas. B. Day, notary public, as exhibit to said deposition of Peter J. Morris, and also as an exhibit to said deposition of John J. Payne, the same being signed by Mary Guinn, Susan Curtis & Ann Payne. (3.) The depositions of Isaac W. Boulware & N. C. Kouns, filed in this court Oct. 14, 1869, and also Exhibit A to
148³ said Kouns' deposition. (4.) The agreement of the parties by counsel, filed Ap'l 7, 1870, in relation to the notes of Babcock, Bryan, Benton & Bell, and copies of said notes annexed to said agreement of the parties. (5.) Copy of a mortgage deed to John M. Houston, dated Ap'l 13, A. D. 1863, filed Ap'l 7, 1870. (6.) The deposition of Zadok Hook, filed in this cause Ap'l 7, 1870, and taken in Fulton, Dec'b'r 20, '69, with exhibits No. 1, 2, 3, 4, 5, 6, 7, and 8 attached thereto. (7.) The depositions of John J. Payne, Jeremiah Morton, Peter J. Norris, Fayette M. Latham, filed March 18, 1870; Thos. Rixey, George E. Marshall, and all exhibits referred to therein, said last-named batch filed March 18, 1870. (8.) The letters of administration taken by Henry Gambs, public administrator of St. Louis County, Mo., on the estate of Phares Guinn, dec'd, & proceedings thereon, marked X, No. 1. (9.) The letters of administration taken by Henry Gambs, public adm'r of St. Louis County, Mo., on the estate of John J. Curtis, dec'd, and proceedings thereon, marked X, No. 2. (10.) The letters of administration taken by Henry Gambs, public adm'r of St. Louis County, Mo., on the estate of Abraham Curtis, dec'd, & proceedings thereon, marked X, No. 3. (11.) The decision of Mr. Delano, Commissioner of Internal Revenue, three papers in a bundle, marked X, No. 4; and on the part of the defendants the following: (12.) The deposition of Zadok Hook,
148⁴ taken at Fulton, Mo., with all *all* exhibits, being the same put in evidence by pl'ffs. (13.) Also the deposition of said Hook, taken before the master, and all exhibits. (14.) Also the deposition of John A. Hockaday, taken at Fulton, and exhibit thereto filed Ap'l 7, 1870. (15.) Also depositions of Daniel Nolly, George Bartley, Joshua J. P. Johnson, Henry S. Turner, Samuel H. Berry, William H. Bailey, Harvey Newsom, William Carrington, John A. Flood, James Richenbaugh, Thos. B. Harris, John Bartley, Wm. Harrison, Monroe Sampson, Henry Larimore, Achilles Wilkerson, and Lewis Ruhle. (16.) The defendants proved on the hearing that the several sums of money mentioned in the master's report as paid to Ann Burnham & Virginia Sappington, the only heirs of William Curtis, dec'd, were in fact paid as stated in said report of the master.

We agree that the above order shall be entered, and that the facts above stated are true, for the purposes of the appeal, Sept. 12, '70.

GLOVER & SHEPLEY & BARBOUR, *for Pl'ffs.*
HENDERSON & HAYDEN, *for Defendants.*

149 EVIDENCE FOR PLAINTIFFS.

Bond of Zadok Hook as public adm'r of Callaway County.

Know all men by these presents that we, Zadok Hook, as principal, and William Carrington, Samuel Watson, Benjamin Ficklin, Monroe Sampson, S. A. Trimble, Isaac F. Coons, Jno. A. Comer, Alvan West, Tho's H. Beeding, John West, Martin Baker, John Baker, Tho's J. Baker, W'm J. Bedsworth, H. Larimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neill, & Jno. A. Adkins, as securities, are held and firmly bound to the State of Missouri in the penal sum of one hundred and ninety thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, &c., jointly, severally, & firmly by these presents, sealed with our seals, and dated this 24th day of September, A. D. 1862.

The conditions of the above bond *is* such that whereas the county court of Callaway County, Missouri, did, on the 17th day of the present month, September, 1862, make an order requiring the said Zadok Hook, as public administrator in & for said county, to give additional bond & security:

Now, if the above bound Zadok Hook shell well and faithfully discharge all the duties of his office as public administrator, then this bond to be void; otherwise to remain in full force.

(Signed) ZADOK HOOK. [SEAL.]
WILLIAM CARRINGTON. [SEAL.]
150 SAMUEL WATSON. [SEAL.]
BENJAMIN FICKLIN. [SEAL.]
MONROE SAMPSON. [SEAL.]
S. A. TRIMBLE. [SEAL.]
ISAAC F. COONS. [SEAL.]
JNO. A. COMER,
(P'r W. R. WILSON.) [SEAL.]
ALVAN WEST. [SEAL.]
THOMAS H. BEEDING. [SEAL.]
JOHN WEST. [SEAL.]
MARTIN BAKER. [SEAL.]
JOHN BAKER. [SEAL.]
THOMAS J. BAKER. [SEAL.]
W'M J. BEDSWORTH. [SEAL.]
HENRY LARIMORE. [SEAL.]
JOSEPH FISHER. [SEAL.]
W'M TRIMBLE. [SEAL.]
ELISHA H. BLACKWELL. [SEAL.]
JEREMIAH N. B. NEILL. [SEAL.]
JNO. A. ADKINS,
(P'r W. R. WILSON.) [SEAL.]

Signed, sealed, & acknowledged in presence of—
WM. R. WILSON, *Clk.*

STATE OF MISSOURI,
County of Callaway, ss:

I, William R. Wilson, clerk of the county court in & for said county of Callaway, do certify that the within and foregoing copies of bonds of Zadok Hook, public administrator in & for said county, marked "A & B," are full and complete copies of the original bonds now on file in my office, with the following indorsement made on the bond marked

"B:" Filed October 1st, 1862, and approved October 20th, 1862,
151 in open court. (Signed:) W'm R. Wilson, clerk.

Witness my hand & seal of office, this 28th day of April, A. D. 1866.

(Signed) WILLIAM R. WILSON, *Clk.* [SEAL.]

[5c. stamp.]

STATE OF MISSOURI,
County of Callaway, ss:

I, Thomas Ansell, presiding justice of the county court in and for said county, do certify that William R. Wilson, whose jenuine signature appears to the above & foregoing certificate, is, and was at the time of making the same, the duly authorized clerk of this court, commissioned and qualified according to law, and that full faith & credit are due to his official acts as such.

In testimony whereof I have hereunto signed my name & caused to be affixed the seal of said court, at office in Fulton, this — day of May, A. D. 1866.

[SEAL OF COURT.] (Signed) THOMAS ANSELL, *P. J. C. C. C.*

[5c. rev. stamp.]

STATE OF MISSOURI,
County of Callaway, ss:

I, William R. Wilson, clerk of the county court in and for said county, & which is a court of record, do hereby certify the honorable Thomas Ansell, whose jenuine signature is signed to the foregoing certificate, is, and was at the time of signing the same, the presiding justice of our said county court, duly commissioned and qualified according to law.

Witness my hand and seal of said court. Done at office, in Fulton, this — day of May, A. D. 1866.

[SEAL OF COURT.] (Signed) WILLIAM R. WILSON, *Clk.*

[5c. rev. stamp.]

152 *Transcript of record of proceedings of Zadok Hook as adm'r of Callaway Co.*

STATE OF MISSOURI,
County of Callaway.

In the matter of estate of Fielding Curtis, dec'd.

At a county court continued & held in the court-house in the city of Fulton, in said county, on Monday the 18th day of March, A. D. 1866, and on the 2d day of said court, the following proceedings were had, to wit: Justices Hopkins & Ming sitting:

"Whereas this court did, on the 19th day of February last, direct the clerk thereof to enter of record an order directing Zadok Hook, public administrator of Callaway County, to take in charge and administer as required by law the estate of Fielding Curtis, deceased; but said clerk having failed to make said order, the court directs that the following order be now made:

"Now, on this day comes D. M. Burnam, and makes his application for letters of administration upon the estate of Fielding Curtis, deceased, late of Callaway County, Mo., and tenders his affidavit and bond in manner & form as the law requires; and Zadok Hook, public administrator of Callaway County, likewise makes application for letters of adminis-

tration upon the estate of the said Fielding Curtis, deceased; and the court having heard and fully understanding the matter, considers and orders that the application of said Burnam be rejected and overruled, and that Zadok Hook, public administrator in and for Callaway County, take charge of the estate of Fielding Curtis, deceased, and ad-
153 minister the same as required by law."

In pursuance of the above and foregoing order, Zadock Hook, administrator as aforesaid, filed in this office on the 30th day of March, A. D. 1861, the inventory, appraisement, & sale bill of the personal estate of said deceased, as well the inventory of slaves & real estate belonging to said deceased in his lifetime, and which are in words and figures following, to wit:

Inventory of estate of Fielding Curtis.

"The following is an inventory of the estate of Fielding Curtis, deceased, made by Zadock Hook, administrator of said Fielding Curtis, assisted by William Carrington and Joseph Boyd, and completed on the 26th February, 1861:

	$ Interest.	$ Principal.
Amount of gold on hand		111 00
" " silver "		9 45
" " Missouri bank notes		600 00
One note on Peter E. & Hiram Smith for		900 00
Dated 2nd January, 1861, due 1st January, 1862.		
Interest on same *a* 10 per cent	13 75	
One note on John P. Allen and Berry Divers		100 00
Dated 1st January, 1861, due 1st Jan'y, 1862.		
Interest on same *a* 10 %	1 37	
One note on J. N. B. Neil and Moris Wilkerson, dated Jan'y 2d, 1861, due 3d Jan'y, 1861		150 00
Interest on same *a* 10 pr. ct	2 07	
One note on Wm. Ellis, dated & due 1st Jan'y, 1861		105 00
154 Interest on same *a* 10 pr. ct	1 40	
One note on J. W. Boulware, D. D. Ford, W. W. Tuttle, & Zadok Hook, dated 3 Sept., '59, due 4th Sept., 1859, for		300 00
Balance interest *a* 10 %	13 75	
One note on Wm. H. Davis, Sam'l Blount, & John M. Baker, dated 1st day of January, 1858, due 1st Jan'y, 1859		300 00
Balance interest on same *a* 10 %	4 16	
One note on A. W. & John Rutherford, dated 28 day of April, 1860, due 28th April, 1861		850 00
Interest on same *a* 10 %	68 47	
One note on James & Irvin Nevins, dated 9th Feb'y, 1860, due 9th Feb'y, 1861, for		800 00
Interest on same *a* 10 %	82 22	
One note on Andrew W. & Sam'l T. Jolley, Rob't E. Baker, Wm. McGee, and M. T. Jolley, dated 11th Feb'y, 1860, due 11th Feb'y, 1861, for		300 00
Interest on same at 10 pr. ct	30 75	

One note on Sam'l T. Andrew, W. & Matthew T. Jolley, Rob't E. Baker, & Wm. McGee, dated 10th Feb'y, 1860, due 10th Feb'y, 1861, for		300 00
Interest on same *a* 10 pr. ct	30 83	
	$248 77	4,825 45
One note on Wm. McGee & Sam'l Watson, dated 12th March, 1859, due 12 Mch, 1860, for		400 00
155 Balance interest *a* 10 %	37 46	
One note on Nathaniel Biggs & N. T. Martin, dated 9th Oct., 1859, due 9th Oct., 1860		49 00
Balance interest on same *a* 10 %	1 76	
One note on C. C., Cha's T. Edgar, & Jno. B. Fenly, dated 18th Jan'y, 1856, due 18th Jan'y, 1857		600 00
Balance in't on same *a* 10 pr. ct	65 00	
One note on C. C. Carter and W'm D. Hume, dated 25th Feb'y, 1858, due 25th Feb'y, 1859, for		570 00
Interest on same *a* 10 pr. ct	56 25	
One note on James A. Blackman, Jno. West, and Jno. Duncan, dated 5th day of August, 1858, due 5th day of August, 1859, for		200 00
Balance interest on same *a* 10 %	10 83	
One note on estate O. W. Crews, with C. C. Carter and W'm D. Hume as securities, allowed by county court of Boone County, 2nd May, 1859, for		880 00
Balance interest on same *a* 10 %	70 38	
One note on W'm Darby, dated Dec'r 12th, 1859, due 12th Dec'r, 1860, for		145 00
Interest on same *a* 6 pr. ct	1 32	
One note on Sam'l C. Wood, dated 1st Jan'y, 1861, due 2nd Jan'y, 1861, for		76 00
Interest on same at 10 pr. ct	1 05	
One rec'pt for a note on R. D. Renor & James Boyd, given to F. Curtis by Jno. W. Moon, constable of Round Prairie Township, for		100 00
156 One rece'pt by the same to the same, for a note on S. N. King, R. S. & E. T. Bruner, for		40 00
One rec't by the same to the same, for two notes on W'm Lunday and Jno. L. Martin, amounting to		145 00
One note on Sam'l C. Wood, dated 1st Jan'y, 1862, for	42 00	
One note on Peter E. Smith, due 25 Dec., 1861, for hire negro	130 00	
One note on W'm Hudson, due 25 Dec., 1861, for hire negro	35 00	
One note on J. N. B. Neil, due 2d Jan'y, 1862, for hire negro	110 00	

One note on Sutton Crutchfield, due 1st Jan'y, 1862, for hire of negro girl	40 00	
	849 82	8,031 15
One rec't for a note on Benjamin Fieklin, given by Jno. W. Moon, constable of Round Prairie Township, for		84 00
One note on Tho's C. Hudson and James Sims, dated 23d Nov'r, 1859, due one day after		30 00
Interest on same *a* 10 pr. ct	3 72	
One note on Edward Young & James M. Ellis, dated 27th Jan'y, 1860, due 27 Jan'y, 1861		350 00
Balance interest on same *a* 10 %	2 22	
One note on P. H. Duly, Sam'l Enoch, G. W. and W. M. Duly, dated 21st Dec'r, 1857, due 21st Dec'r, 1858, for		1,200 00
Balance interest on same *a* 10 %	139 66	
One note on J. I. Hickman, David H. & T. B. Hickman, dated 1st Jan'y, 1856, due 1st Jan'y, 1857, for		1,000 00
157 Balance interest on same *a* 10 %	113 87	
One note, W'm M. & Enoch C. Duly, dated 4th Jan'y, 1856, due 4th Jan'y, 1857, for		300 00
Bal. interest on same *a* 10 %	3 83	
One note on W. T. & T. G. Vaughan, dated 18th Jan'y, 1859, due 12 mo's after date		1,140 00
Bal. interest on same *a* 10 p'r c't	10 13	
One note on P. & A. Ellis, dated 25th Jan'y, 1858, due 12 mo's after date, for		100 00
Bal. interest on same *a* 10 p'r c't	20 69	
One note on David D. & Rich'd Sappington, dated 19th August, 1859, due 12 mo's after date, for		100 00
Interest on same *a* 10 %	15 00	
One note on J. Adair, T. A. Howard, Jno. A. Adcock, & James Selby, dated 1st Jan'y, 1856, due 1st Jan'y, 1857, for		100 00
Bal. interest on same *a* 10 p'r c't	11 37	
One note on Tirce M. & Rich'd Sappington, Jno. Baker, & Jno. M. Sappington, dated 22d August, 1859, due 12 mo's after date		1,000 00
Interest on same *a* 10 p'r c't	149 45	
One note on Hiram Right & T. G. Vaughan, dated 20th Oct., 1856, due 12 mo's after date, for $165 00, with a credit 20th Oct., 1858, on principal of $15 50, leaving balance on principal		149 50
Bal. interest *a* 10 p'r c't	34 88	
	$1,354 64	13,584 65
158 One note on Jno. Baker, Martin Baker, & W'm Ellis, dated 1 Jan'y, 1856, due 12 mo's after date		325 00
Bal. interest on same at 10 p'r c't	4 50	

One note on Rob't M. & Jno. McClanahan, dated 29th Dec'r, 1358, due 30 Dec'r, 1858, for		90 00
Bal. interest on same *a* 10 p'r c't	1 24	
One note on John McClanahan and Joseph Culbertson, dated 21st Jan'y, 1856, due 12 mo's after date		200 00
Bal. interest on same *a* 10 p'r c't	2 76	
One note on James Davis, Peter Abram, & John Ellis, dated 1st Jan'y, 1858, due 12 mo's after date		2,700 00
Balance interest on same *a* 10 %	37 50	
One note on James M. Ellis & Edward Young, dated 1st Jan'y, 1860, due 12 mo's after date, for		509 00
Interest on same *a* 10 p'r c't	57 90	
One note on James C. Barger & Hiram Smith, dated 1st Jan'y, 1859, due 12 mo's		700 00
Bal. interest on same *a* 10 p'r c't	9 71	
One note on Matthew T. Jolley & Martin Baker, dated 1st Jan'y, 1856, due 12 mo's after date, for		250 00
Bal. interest *a* 10 p'r c't	3 47	
One note on Jno. A. Leopard, E. C. & G. W. Duby, dated 1st Jan'y, 1859, due 12		
159 mo's after date, for		440 00
Bal. interest on same *a* 10 p'r c't	6 10	
One note on Joseph Boyd, Jno. P. Morlery, and R. M. Boyd, dated 20th Aug., 1859, due one day after date, for		100 00
Bal. interest on same *a* 10 p'r c't	5 00	
One note on Joseph Boyd, R. D. Renor, Jno. P. Woolery, & R. M. Boyd, dated 1st Jan'y, 1856, due 12 mo's after date		200 00
Bal. interest on same *a* 10 p'r c't	22 21	
One note on Benjamin Ficklin, Jno. Baker, & W. H. Davis, dated 1st J'n'ry, 1856, due 12 mo's after date, for		400 00
Balance interest on same *a* 10 p'r c't	5 55	
	1,510 58	19,498 65
One note on Geo. Hubbard & A. R. Gibbs, dated 1st Jan'y, 1856, due 12 mo's after, for		500 00
Bal. interest on same *a* 10 p'r c't	6 92	
One note on James C. Herring, W'm Knight, & Dabney C. Herring, dated 20th Feb'y, 1860, due 12 mo's after date		314 00
Interest on same *a* 10 p'r c't	31 40	
One note on W. O. Johnson, Rob't Carter, W'm M. Sims, W'm H. Davis, Robertson Hundley, & Berry Divers, dated 1st Dec'r, 1859, due 12 mo's after date		1,395 00
Bal. interest on same *a* 10 p'r c't	31 00	
One note on T. A. Howard & Pleasant		
160 Robinett, dated 1st July, 1856, due 12 mo's after date, for		100 00

Bal. interest on same, 10 p'r c't			1 37	
One note on W'm & Jno. Baker, & Jno. T. Collier, dated 1st Jan'y, 1856, due *due* 12 mo's				300 00
Balance interest on same *a* 10 p'r c't			33 16	
One note, Jesse D. Patton, P. J. Ruffner, David Russell, & N. Sappington, dated Dec'r 30th, 1858, due 12 mo's after date, for $1,000, credited 2d Feb'y, 1860, by $443, also credited on the 11th Feb'y, 1860, by $590, am't due of principal & interest				85 78
One note on Geo. W. Bruner, Elizabeth King, & Jno. A. Comer, dated 29th Dec'r, 1859, due 12 mo's after date				200 00
Bal. interest same *a* 10 p'r c't			2 76	
One note on James Nevins & Rob't Criswell, dated 1st Jan'y, 1859, due 12 mo's after date.				1,120 00
Bal. interest on same *a* 10 p'r c't			27 55	
One note on Ja's H. & Tho's J. Selly, dated 23d Aug't, 1859, due 12 mo's after date				80 00
Interest on same *a* 10 p'r c't			3 93	
One note on Nathaniel C. Biggs & W. J. Martin, dated Oct. 6th, 1859, due 1 day after date, for.				88 00
Balance interest on same *a* 10 p'r c't			3 17	
			1,651 84	23,681 40
161	One note on Spencer & Boss, E. M. Boss, & Peter Ellis, dated 6th Nov., 1860, due 12 mo's after date			1,400 00
Interest on same, *a* 10 p'r c't			40 42	
One note on Jno. A. Adkins, Susan Adkins, & Hawley Wilkerson, dated 30th June, 1859, due 12 mo's after, for				110 00
Balance interest on same, *a* 10 p'r c't			7 02	
One note on Jno. D. Nevins & Jno. A. Comer, dated 10th day of Oct'r, 1860, due one day after date, for				1,035 00
Interest on same, *a* 10 p'r c't			37 37	
One note on Jno. W. Selby, Jno. Adcock, Rob't E. & Isaiah Selby, dated 27th Dec'r, 1856, due one day after date				600 00
Balance interest on same, *a* 10 p'r c't			8 33	
One note on A. W. Howison & W. J. Hudson, dated 14th April, 1860, due 12 mo's after date.				1,200 00
Interest on same, *a* 10 p'r c't			102 00	
One note on James M. & Alvan Ellis, dated 1st Jan'y, 1858, due 12 mo's after date; credit on principal, $32 00				1,538 00
Balance interest on same, *a* 10 p'r c't			21 26	
One note on Hanley & W. W. Wilkerson, allowed in 5th class of debts by Callaway County court, on 19th Nov'r, 1860, for				569 15
Interest, *a* 10 p'r c't from allowance			14 22	
162	One note on N. Kouns, C. H. Hardin, and N. C. Kouns & John R. Craighead, dated Oct. 11th, 1856, due one day after date, for			350 00

Balance interest on same, *a* 10 p'r c't	12 53	
One note on James & E. A. Stark, dated 26th July, 1858, due 12 mo's after date		1,000 00
Bal. interest on same, *a* 10 p'r c't	56 65	
One note on M. Henry, Swift & Isaiah Selby, dated 21st Oct., 1857, due 12 mo's after date, for		300 00
Bal. interest on same, *a* 10 p'r c't	10 00	
One note on Matthew T. Jolly, Tho's J. Baker, Alvan West, Sam'l T. & Andrew W. Jolley, dated 5th day of M'ch, 1860, due 12 mo's after date		250 00
Interest on same, *a* 10 p'r c't	23 95	
	$1,985 59	$32,033 58

One note on William Hook, C. L. Turner, & Ben. Ficklin, dated M'ch 7th, 1860, due one day after date		133 00
Interest on same, *a* 10 p'r c't	12 75	
One note on Jno. & James Allen, J. B. Grant, & Rob't M. Jones, dated April 11th, 1859, due one day after date		100 00
Balance interest on same, at 10 p'r c't	8 60	
One note on Jno. A., Susan, & Ja's M. Adkins, & Jno. H. Adkins, dated 30th June, 1859, due 12 mo's after date, for		400 00
Bal. interest on same, *a* 10 p'r c't	25 54	
163 One note on Jno. A. Comer & Jno. D. Nevins, dated 10th Oct. 1860, due one day after date, for		150 00
Interest on same, *a* 10 p'r c't	5 41	
One note on T. B., T. H., & D. H. Hickman, dated April 16th, 1860, due 12 mo's after date, for		2,600 00
Interest on same, *a* 10 p'r c't	219 54	
One note on W'm Lunday & Jno. Martin, Jno. A. Comer & W'm Martin, dated 17th Nov'r, 1859, due three years after date, with ten p'r c't from date, for		1,500 00
Balance interest on same, *a* 10 p'r c't	38 75	
One note on Jno. L. Martin, Edmund P. Pemberton, & G. W. Wilkerson, dated 17th Nov'r, 1860, due 12 mo's after date		150 00
Balance interest on same, *a* 10 p'r c't	3 87	
One note on Nathaniel Biggs & M. J. Martin, dated 6th Oct'r, 1859, due one day after date, for		265 62
Bal. interest on same, *a* 10 p'r c't	9 95	
One note on Jesse D. Patten & David Russell, dated 24th July, 1860, due 12 months after date, for		130 00
Interest on same, *a* 10 p'r c't	7 40	

One note on Jno. P., Jno., and Alphonse Baker & John Ellis, dated 22d J'n'y, 1858, due 12 mo's after date, for		426 00
Bal. interest due, *a* 10 p'r c't	45 90	
	$2,363 30	$37,888 20
164 One note on Jno. L. Chrisman, Elijah Chrisman, Jerry W. Miller, & David Wagoner, dated 22d Feb'y, 1858, due 12 mo's after date, for		500 00
Bal. interest on same, *a* 10 p'r c't	49 66	
One note on Brite Crews & B. M. Miller, Turley Cheatham & David Wagner, dated 21st Feb'y, 1859, due 12 mo's after date, for		300 00
Balance interest on same, *a* 10 p'r c't	29 92	
One note on Rich'd D. Renor, Tho's H. Renor, & Ja's Boyd, dated 23d Feb'y, 1860, due 9th Jan'y, 1861, for		126 00
Interest on same, *a* 10 p'r c't	14 03	
One note on R. D. Renor, Joseph Boyd, Tho's A. & Bayless Renor, & Sam'l Watson, dated 7 Jan'y, '57, due 12 mo's		500 00
Bal. interest on same, at 10 p'r c't	55 94	
One note on N. H. Robnett, T. B. Nesbit & Martin Baker, & Pleasant Robnett, dated 1st Jan'y, 1856, due one day after date, for		1,000 00
Balance interest on same, *a* 10 p'r c't	13 87	
One note, W'm L. & T. G. Vaughan, dated 18th Jan'y, 1860, due 12 mo's after date, for		114 00
Bal. interest on same, *a* 10 p'r c't	1 00	
One note on J. L. Day, C. C. Carter, & Joseph Culbertson, dated 20th Jan'y, 1857, due one day after date, for		700 00
Balance interest on same, *a* 10 p'r c't	5 83	
165 One note on T. G. & W'm L. Vaughan, dated 24th Jan'y, 1860, due 12 mo's after date, for		300 00
Balance interest on same, *a* 10 p'r c't	2 15	
One note on Edward Young, dated 25th January, 1861, due one day after date, for		35 00
Interest on same *a* 10 pr. ct	22	
One note on Peter E. & Wm. E. Smith, dated 1st Jan'y, 1858, due 12 mo's after date, for		396 00
Bal. interest on same *a* 10 p'r c't	5 50	
	$2,541 42	$41,859 20
One note on C. L. Turner, W'm Hook & Jno. McClanahan, dated 11th Ap'l, 1859, due 16th Dec'r, 1859, for		100 00
Balance interest on same *a* 10 p'r c't	8 57	
One note on W. W. Woodson & W. W. Wilson, dated 2d Jan'y, 1859, due 12 mo's after date, for		1,575 00
Balance interest on same *a* 10 p'r c't	179 37	

One note on George & Warren Woodson, dated 1st Jan'y, 1856, due 1st Jan'y, 1857		350 00
Balance interest on same *a* 10 pr. ct	39 84	
One note on P. H. & W'm M. Duly, dated Dec. 20th, 1859, due one day after date, for $122, credited same day for $2, balance		120 00
Balance interest on same *a* 10 p'r c't	14 00	
One note on Tho's C. Hudson & James Sims, dated 23d Nov'r, 1857, due 12 mo's after date, for		300 00
Balance interest on same *a* 10 p'r c't	37 25	
One note on George S. Jolley, Joseph Culbertson and Jno. M. Baker, dated 30th		
166 Jan'y, 1859, due 12 mo's after date, for		200 00
Balance interest on same *a* 10 p'r c't	1 11	
One note on C. L. Turner & Jno. Carrington, dated 15th Dec'r, 1859, due 12 mo's after date, for		7 25
Interest on same *a* 10 p'r c't	84	
One note on W. J. Hudson, dated 16th Jan'y, 1861, due one day after date		33 75
Interest on same from 25th Dec., 1860	51	
One note on P. & N. H. Robnett, dated 1st Jan'y, 1858, due 12 mo's after date		400 00
Bal. interest on same *a* 10 p'r c't	85 54	
One note on David Russell & Jesse D. Patton, dated 12th March, 1859, due 12 mo's after date, for		400 00
Interest on same *a* 10 p'r c't	77 55	
One note, R. J. Martin, Nathaniel Biggs & Rob't J. Martin, dated 23d July, 1858, due one day after date, for		238 31
Balance interest on same *a* 10 p'r c't	37 51	
One note on Rich'd L. & Elijah E. Chrisman, dated 27th Feb'y, 1859, due one day after date, for		50 00
Balance interest on same *a* 10 p'r c't	4 97	
	$3,028 48	$45,633 51
One note on James C. Barger, dated 12th Jan'y, 1861, due one day after date, for		70 00
Interest on same *a* 10 p'r c't	73	
One note on James Davis & Edward		
167 Young, dated Jan'y 1st, 1861, due 1 day, for		270 00
Interest on same *a* 10 p'r c't	3 74	
One note on Jno. B. & Jno. W. Moore, dated 13th Jan'y, 1860, due 12 mo's after date, for		1,246 30
Balance interest on same *a* 10 p'r c't	12 79	
One note on Jno. B. & Jno. W. Moore, dated 7th Jan'y, 1860, due 12 mo's after date		500 00
Bal. interest on same *a* 10 p'r c't	5 96	
One note on Jno. B. & Jno. W. Moore, dated 12th Jan'y, 1861, due one day after date		174 63
Interest on same *a* 10 p'r c't	1 79	

One note on Joseph M. Culbertson, Rob't McClanahan & Joseph Culbertson, dated 1st Jan'y, 1858, due 12 mo's after date, for		900 00
Balance interest on same *a* 10 p'r c't	12 50	
One note on Oscar & Thaddeus Collard, dated 27th day Sept., 1860, due one day after date, for		54 50
Interest on same *a* 10 p'r c't	2 14	
One note on Merdith, Ja's & Rob't J. Martin, dated 23d Feb'y, 1856, due 12 mo's after date, for		200 00
Bal. interest on same *a* 10 p'r c't	39 83	
One note on W. W. Bradley, E. P. Pemberton, M. T. Jolley, & Tenley Cheatham, dated 1st Ap'l, '59, due 12 mo's		300 00
Bal. interest on same *a* 10 p'r c't	26 66	
One note on Geo. Harman, Jno. Baker & W'm H. Davis, dated 15th June, 1857, due		
168 12 mo's after date, for		200 00
Balance interest on same *a* 10 p'r c't	33 60	
One note on M. S. Matthews & J. B. Douglass, dated 17th Feb'y, 1856, due 12 mo's after date for		530 00
Balance interest on same *a* 10 p'r c't	53 44	
	$3,221 66	$50,078 94
One note on J. L. Miller & M. D. L. Baker, Rob't E. Baker & David Waggoner, dated 25th Jan'y, 1859, due 12 mo's after date, for		1,000 00
Bal. interest on same *a* 10 p'r c't	106 94	
One note on John West, Z. Hook & Alvan West, dated 1st Jan'y, 1858, due one day after date, for		976 50
Bal. interest on same *a* 10 p'r c't	111 20	
One note on John M. Baker, Sam'l Shaw and W. H. Davis, dated 1st day of Jan'y, 1856, due 12 mo's after date, for		300 00
Balance interest on same *a* 10 p'r c't	34 16	
One note on James Nevins, due 10th Jan'y, 1861,		112 00
Interest on same *a* 10 p'r c't	12 44	
One note on C. C. Davison, Jno. W. Martin, Jno. P. Woolery & Benj. Ficklin, dated 19th Jan'y, 1858, due 12 mo's after date, for		300 00
Balance interest on same *a* 10 p'r c't	32 58	
One note on James Wilfley, Abram Ellis & Jno. P. Wilfley, dated Jan'y, 20, 1857, due 12 mo's after date, for		1,000 00
169 Balance interest on same *a* 10 p'r c't	108 33	
One note on James A. Blackman, A. W. Howison, and Jno. A. Comer, dated 19th Jan'y, 1860, for		400 00
Balance interest on same *a* 10 p'r c't	43 44	
One note on Samuel Watson, dated 1st Jan'y, 1860, due one day after date, for		36 78
Interest on same at 10 p'r c't	4 18	

One note on Berry Divers, Jno A. Comer, & Sam'l Watson, dated 30th Dec'r, 1858, due 12 mo's after date		600 00
Bal. interest on same *a* 10 p'r c't	8 33	
One note on Sam'l Watson & Jno. A. Comer, dated 1st Jan'y, 1859, due 12 mo's after date, for		367 80
Bal. interest on same *a* 10 p'r c't	41 88	
One note on T. Cheatham, J. F. Coons, Ja's C. Herring, & Edmund P. Pemberton, dated 6th Jan'y, 1859, due 12 mo's after date, for		500 00
Bal. interest on same *a* 10 p'r c't	6 08	
	$3,731 22	$55,672 02
One note on Ja's M. & Jos. Culbertson, dated 1st Jan'y, 1861, due 12 mo's from date, for		90 00
Interest on same at 10 p'r c't	1 24	
One note on Richard Y. Curtis & Sutton Crutchfield, due 2d J'n'y, 1861		31 00
Interest on same *a* 10 p'r c't	41	
170 One note on Geo. Hubbard, due 2d day of J'n'y, 1861, for		50 00
Interest on same *a* 10 p'r c't	67	
One note on Sam'l Hardin, Jno. W. Selby, Jno. Adcock, & Isaiah Selby, dated 6th Nov., 1858, due 12 mo's after date		200 00
Balance interest on same *a* 10 p'r c't	5 83	
One note on Robertson Hundley, dated March 22d, 1860, due 12 mo's after date, for		3 50
Interest on same *a* 10 p'r c't	6 69	
One note on Sam'l R., T. B., & Martha T. Dyer, Geo. A. Nicholson, Joseph Culbertson, & Martin Baker		1,000 00
Balance interest on same *a* 10 p'r c't	54 16	
One note on Sam'l R. Dyer, Martha T. Dyer, & H. Lawther, dated 30 June, 1858, due 12 mo's after date, for		1,100 00
Bal. interest on same *a* 10 p'r c't	70 26	
One note on Robertson Hundley, James Sims, and John A. Comer, dated 22d March, 1858, due 12 mo's after date		350 00
Balance interest on same *a* 10 p'r c't	31 87	
One note on James W., Isaiah, & Jno. W. Selby, and Jno. H. Adcock, dated 23d August, 1859, due 12 mo's after date, for		800 00
Bal. interest on same *a* 10 p'r c't	39 00	
One note on Cha's T. Fenley, Jno. B. & Edgar & Columbus W. Fenley, dated 1st January,		
171 1856, due 12 mo's after date, for		150 00
Bal. interest on same *a* 10 p'r c't	17 07	
	$3,958 42	59,516 52
One note on Jesse D. Patten, David Russell, N. Sappington, & J. S. Strode, dated 24th July, 1858, due 12 mo's after date, for		1,300 00
Balance interest on same *a* 10 p'r c't	74 36	

One note on Hiram & John Smith, dated 3d August, 1859, due 12 mo's after date, for....		250 00
Bal. interest on same *a* 10 %.....	13 54	
One note on A. J. Sampson & Jno. D. Nevins, dated 20th August, 1859, due in 12 mo's.....		200 00
Balance interest on same *a* 10 p'r c't.....	10 00	
One note on Jno. A. & Jno. B. Fenley & Jerry W. Miller, dated 12 Aug't, 1857, due one day after date.....		400 00
Balance interest on same *a* 10 p'r c't	20 83	
One note on A. W. Hounson, dated Sept. 14th, 1860, due 12 mo's after date, for.....		116 00
Interest on same *a* 10 p'r c't.....	5 03	
One note on J. B. Thomas & Miss Prewitt, dated 1st Oct., 1859, due one day after date, for.....		161 90
Balance interest on same *a* 10 p'r c't..... ...	4 93	
One note on Jno. & W. Ellis, dated 2d Jan'y, 1858, due 12 mo's after date, for.....		500 00
Balance interest on same *a* 10 p'r c't.....	7 16	
172 Total am't of interest & principel...	$4,094 27	$62,444 42

Two trunks, a lot of clothing, & saddle and an old pistole.
One negro man named Ralph.
" " " " Anderson.
" " woman " Mavine.
" " girl " Mary.
" " " " Elizabeth.

ZADOK HOOK,
Adm'r of Fielding Curtis, dec'd.

Attest:
JOSEPH BOYD.
W'M CARRINGTON.

STATE OF MISSOURI, *County of Callaway, ss:*

Zadok Hook, administrator of the estate of Fielding Curtis, deceased, says that the within and foregoing is a full inventory and description of all the moneys, goods, chattels, and estate, real & personal, books, papers, & evidences of debt and of title of the deceased, and of all debts due and to become due, so far as he can ascertain them, and that he was not indebted or bound in any contract to the deceased at the time of his death except as stated in said inventory.

ZADOK HOOK.

Subscribed & sworn to before me this 30th day of March, 1861.
W. H. BAILEY,
Clk County Court.

173 *Appraisement of the personal property of Fielding Curtis, deceased, made by A. W. Howieson, William J. Hudson, and W'm Carrington, on the 16th March, 1861.*

1 saddle, bridle, and blanket, valued at		7 50
1 trunk,	"	1 00
1 "	"	50
1 pair pants,	"	50

1 " "	"		1 00
1 coat, vest, & pants,	"		25
1 pair boots,	"		1 75
1 " shoes,	"		50
1 pistol & moulds,	"		25
3 *par* socks, 1 p'r leggins, &c.,	"		50
1 cloth overcoat,	"		8 00
1 " dress "	"		2 50
1 " " "	"		2 50
1 pair pants,	"		10
1 vest,	"		50
3 shirt & p'r drawers,	"		75
1 cravat,	"		75
1 hat, hand'k'f, & gloves,	"		40
1 negro man, Anderson,	"		500 00
1 " " Ralph,	"		500 00
1 " woman, Marion,	"		200 00
1 " girl, Mary,	"		800 00
1 " " Elizabeth,	"		700 00
Total amount			2,729 25

WILLIAM CARRINGTON,
WILLIAM J. HUDSON,
Appraisers.

Filed 30 March, 1861.

W'M H. BAILEY, *C.*

1861, 23 May—Examined and approved by the court.

W'M H. BAILEY, *C.*

Recorded.

W'M R. WILSON, *Clerk.*

174 *Affidavit of appraisers.*

A. W. Howieson, William J. Hudson, and William Carrington having been appointed to appraise the personal estate of Fielding Curtis, dec'ed, before entering on their duties make oath and say that they are not interested, nor of kin to any person interested in said estate as heir or devisee, and that they will, to the best of their ability, view and appraise the slaves and other personal estate, to them produced.

A. W. HOWESON.
W'M J. HUDSON.
W'M CARRINGTON.

Sworn to and subscribed before me this 16th day of March, 1861.

ZADOK HOOK,
Public Adm'r Callaway County.

Account sales of the personal property of Fielding Curtis, deceased, made at Bodysville, Callaway County, on the 16th day of March, 1861, by Zadok Hook, adm'r of said deceased, on a credit of twelve months.

W'm Little bought 1 blanket coat	25
John P. Woolery bought 1 p'r gloves & h'dk'f	40
W'm Carrington " 1 hat	10

Joseph Boyd	"	1 pair pants & vest	20
" "	"	1 " " "	35
F. G. Bryan	"	1 " " "	75
" " "	"	1 cravat	75
A. W. Homison	"	3 shirts & p'r drawers	55
Joseph Boyd	"	1 vest	65
Joseph Boyd	"	1 pair pants	10
175 John K. Boyd bought		1 cloth coat	3 00
A. W. Homison	"	1 " "	1 25
Joseph Rhodes bought		1 cloth overcoat	7 05
A. W. Homison	"	1 p'r shoes	30
F. G. Bryan	"	1 " boots	75
W'm Vaughn	"	3 p'r socks, leggins, &c	35
W'm Wilkerson	"	1 pistol & moulds	40
W'm Vaughn	"	1 trunk	20
W'm J. Hudson	"	1 "	1 00
" " "	"	1 saddle & bridle	5 60
Joseph Boyd	"	1 " blanket	60
Amount			$24 60

WILLIAM CARRINGTON, *Clerk.*

Filed March 30, 1861.

BAILEY, *C.*

1861, May 23—Examined and approved by the court.

W. H. BAILEY, *C.*
W. R. WILSON, *Clerk.*

STATE OF MISSOURI, *County of Callaway, ss:*

William Carrington, on his oath, says that the foregoing is a true account of the sales of the personal estate of Fielding Curtis, deceased, made by Zadok Hook, adm'r of the said deceased, at the time therein specified, and that he was clerk of said sale.

W'M CARRINGTON.

Sworn to and subscribed before me this 16 day of March, 1861.

ZADOK HOOK,
Public Adm'r C. C.

176 *First annual settlement of the estate of Fielding Curtis, deceased, made by Z. Hook, administrator of said estate, at the May term of the Callaway County.*

1862.					Cr.	Dr.
To principal on notes						62,444 42
" interest on same						4,094 27
" amount of sale bill						24 60
						$66,563 29
1861, May	23.	By voucher	No.	1	$306 00	
" April	18.	" "	"	2	30 00	
" May	11.	" "	"	3	75 00	
"		" "	"	4	53 40	
" July	15.	" "	"	5	53 65	
" March	16.	" "	"	6	3 50	

"	"	"	"	"	" 7		2 00
"	February	26.	"	"	" 8		4 00
"	"	"	"	"	" 9		4 00
"	July	5.	"	"	" 10		2 00
			"	"	" 11		5 00
1862,	March	3.	"	"	" 12		1 25
"	"	15.	"	"	" 13		3 75
"	April	21.	"	"	" 14		90 00
"	May	15.	"	"	" 15		25 00
			Blanket for Ralph				1 50
			Hat and socks for Ralph				1 00
			Expenses on two trips to Columbia				3 00
			Commision on $664 05				33 20
							697 25
							$65,866 04
177	To amount brought forward						$65,866 04
	To interest at 6 p'r c't on $62,444 42						3,746 64
	Balance due estate						$69,612 68

MAY 20th, 1862.

ZADOK HOOK, *Adm'r.*

SAMUEL B. COLLIER.
GEO. E. O. HOCKADAY.
GEORGE MAUPIN.

1862, May 20.—Approved, signed, and ordered to be filed and recorded.

W'M R. WILSON, *Clerk.*

Recorded in Book P, folio 379.

WILSON, *Clerk.*

The following are copies of the vouchers filed in the foregoing settlement:

No. 1.

Fielding Curtis to W. J. Hudson, DR.

1860, April	2d.	To one month and a half board, 16 66 per month	25 00
"	"	Attention on drinking spree	25 00
"	15.	Attention on d'to	25 00
"	28.	Attention on d'to	25 00
May.		Extra attention in 3 months' sickness	300 00
August.		Attention on spree	25 00
	10.	Attention on d'to	25 00
	25.	Attention on d'to	25 00
Sept'r	10.	Attention on d'to	25 00
		Attention in 3 weeks' sickness	75 00
October	10.	Attention on spree	25 00
	20.	Attention on spree	25 00
	28.	Attention on d'to	25 00
			$650 00

178		To amount brought forward	$650 00
	1860, Nov'b'r 12.	Attention on spree	25 00
	1860, Nov'b'r 25.	Attention on spree	25 00
	"	4 days collecting, $3 00	12 00
		3 trips after the doctor	15 00
		5 trips to Fulton for medicine	15 00
		125 meals transient persons, 25 c'ts	31 25
	1861, Janr. 1.	Horse hire, 2 days	3 00
		Attention on spree	25 00
	10.	Attention on d'to	25 00
	20.	Attention on d'to	25 00
		Last sickness, 2 weeks	50 00
		Geting burial clothes	15 00
		Taking corps to Salem, in Boone	15 00
		Allowed $306, class 5	$931 25

$306 00.—Received of Zadok Hook, adm'r of Fielding Curtis, deceased, three hundred and six dollars in full payment of this account, this 23d May, 1861.

WILLIAM J. HUDSON.

1861, March 19—Account filed, notice waived, sworn to and continued.

BAILEY, *C.*

1861, May 22d—Account proven and allowed in 5 class for $306 00, costs and interest.

W. H. BAILEY, *Clerk.*

$306.—Rec'd of Z. Hook, adm'r of Fielding Curtis, dec's'd, three hundred and six dollars in full payment of this account, this 23d May, 1861.

W'M J. HUDSON.

No. 2.

179 *Fielding Curtis to T. T. Shootman.*

1861, Febr. 5.	To herse, 3 days	$30 00

Received payment by Z. Hook, adm'r of F. Curtis, April 18th, 1861.

T. T. SHOOTMAN.

No. 3.

Estate of Fielding Curtis in account with Jameson & McIntire. DR.

1861, Febr. 3.	To metalic coffin	$65 00
" " " "	cementing same	10 00
		$75 00

Received of Zadok Hook, adm'r of F. Curtis, seventy-five dollars in full of the above account, May 11th, 1861.

JAMESON & McINTIRE.

No. 4.

FULTON, MO., *July 3rd*, 1861.

Mr. Fielding Curtis, deceased, p'r William J. Hudson, bought of D. M. & J. H. Tucker, dealers in dry goods, ready-made clothing, boots and shoes, hats and caps, hardware, crockery, groceries, books and stationery, Yankee notions, &c., &c.

1861, Febr. 4. To 1 fine black cloth coat	25 00
" p'r " casimere pants & vest	14 50
	$39 50
180 To amount brought forward	$39 50
" p'r cotton drawers, 75, p'r shoes, 3 25	4 00
To 1 cravat, 1 75, p'r socks, 25	2 00
" 4.² y'ds merino, 1 40	6 30
" lin. c. h'dk'f, 75, y'd white ribbon, 10	85
" p'r black silk gloves	75
	$53 40

Received payment of Zadok Hook, adm'r of F. Curtis, deceased.
D. M. & J. H. TUCKER.

No. 5.

Estate of Fielding Curtis, deceased, in account with Zadok Hook, adm'r of said estate.

To amount of one year's interest on James Ellis's note, dated first day of January, 1860, for $509, which note ought to have been dated 1st January, 1861	$50 90
Interest on same up to date	2 75
	$53 65

1861, July 15—Upon investigation we find the above error against Curtis's estate.

No. 6.

1861, March 16—Received of Zadok Hook, adm'r of the estate of F. Curtis, one dollar for services in appraising property of said Curtis.
A. W. HOWESON.

Received of Z. Hook, adm'r of the estate of F. Curtis, one dollar for services in appraising property of said Curtis, March 16, 1861.
WILLIAM J. HUDSON.

Received of Zadok Hook, adm'r of the estate of F. Curtis, deceased, one & $\frac{50}{100}$ dollars, for crying sale of said deceased.
March 16th, 1861.
JOSEPH BOYD.

No. 7.

Received of Zadok Hook, adm'r of the estate of Fielding Curtis, deceased, two dollars, in full payment for my services in appraising property of said deceased, and clerking at sale.

March 16th, 1861.

WM. CARRINGTON.

No. 8.

Received of Zadok Hook, adm'r of the estate of Fielding Curtis, deceased, four dollars, in payment for four days' services as witness in examining the papers and making an inventory of the estate of said deceased.

Feb'y 26th, 1861.

JOSEPH BOYD.

No. 9.

Received of Zadok Hook, administrator of the estate of Fielding Curtis, deceased, four dollars, in payment for services as witness in examining the papers and making an inventory of the estate of said deceased.

Feb'y 26th, 1861.

WM. CARRINGTON.

Administrator's notice.

Notice is hereby given that the undersigned, on the 12th day of February, as public administrator of Callaway County, Mo., administered on the estate of Fielding Curtis, deceased. All persons
182 indebted to said estate are requested to make immediate payment, and those having claims against said estate are requested to present, them to me, properly authenticated, within one year from the above date, or they may be precluded from any benefit of said estate; and if not presented within three years from said date, they will be forever barred.

March 1st, 1861.

Z. HOOK, *P. A. C. C.*

"Missouri Telegraph," a public newspaper, published weekly in *in* the town of Fulton, Callaway County, Mo., make oath that the annexed advertisement was inserted in said paper for 3 weeks successively, and in papers of the following dates and numbers, (to wit:

March 1st, 1861	No. 33
" 8, "	No. 34
" 15, "	No. 35

Sworn and subscribed to before me this the 5th day of July, 1861.

$2.

J. B. GRANT.

Received payment, July 5, 1861.

J. B. WILLIAMS.

No. 11.

Received, Fulton, Sept'r 10th, of Z. Hook, $5 00, on *on* account of fee in case of W. J. Hudson vs. estate of F. Curtis, dec's'd.

N. B. KOUNS.

No. 12.

183 Received of Zadok Hook, adm'r of Curtis, from W. J. Hudson, one and $\frac{25}{100}$ dollars for recording a mortgage.

$1 25.

March 3d, 1862.

THOMAS B. NESBIT, *Clerk*,
By J. F. HOLDEN, *D. C.*

No. 13.

Fielding Curtis' adm'r, to William H. Bailey, clerk, *Dr.*

1861.	March 19.	Petition, order, &c	75
		W. J. Hudson, continuance	25
	May 7.	One subpœna for H	50
	" "	2 subpœnas	1 00
		6 oaths, at 5c	30
	" "	Wm. H. Hudson's judgment	50
	" 23.	Orders approving papers	45
			$3 75

1862. March 15. Received payment.

W. H. BAILEY.

No. 14.

Fielding Curtis to Isaac W. Boulwan.

1861.	Oct'r 18.	To fee for services rendered in suit of Curtis, Wm. George & Co., in Callaway circuit court	$120 00
		Credit by cash	30 00
		Amount due	$90 00

"Allowed in the 6th class for $90 00."

Received of Z. Hook, adm'r of F. Curtis, deceased, ninety dollars, in full of the within allowance (less the cost) this 21st Ap'l, 1862.

I. W. BOULWARE.

1862. April court, 21. Allowed in the 6 class for the sum of ninety dollars, with interests and all costs.

184 WILLIAM R. WILSON, *Clerk.*

No. 15.

WM. J. HUDSON *vs.* Z. HOOK, ADM'R OF F. CURTIS. } Callaway county court, October, 1861.

Zadok Hook, adm'r of F. Curtis, deceased, to Nathan C. Kouns, *Dr.*

1861. To fee in case of Hudson vs. the estate of Curtis.....$25 00

For value received, I assign this amount to John Bartley; pay to him, and this shall be your receipt for the same.

NATHAN C. KOUNS.

1862. May 15. Received payment in full by the hands of Z. Hook, adm'r F. Curtis.

JNO. BARTLEY.

Annual settlement of the estate of Fielding Curtis, deceased, made by Zadok Hook, adm'r, on this . . . day of May, 1864.

[The following statement is erased, and the word "void" written twice across the face.]

1863.

May 21.	To balance on settlement		65,184 96
	" Interest received		1,460 00
	" Hire of Anderson for 1863		75 00
	" " " Ralph " "		50 00
	" " " Mary " "		25 00
	" " " Elizabeth " "		25 00
	" " " Marine " "		15 00
			$66,834 96
185	By voucher No. 1	261 88	
	By int. on same at 6	37 30	
	" voucher No. 2	755 00	
	" interest on same at 6	16 76	
	" voucher No. 3	62 50	
	" " No. 4	39 00	
	" " No. 5	12 50	
	" " No. 6	110 50	
	" commission on $1,350 44, at 3	40 51	
	" " No. 7	55 00	
			$1,390 95
			$65,444 01
	By voucher No. 8	874 68	
	Commission on	26 24	
	" clerk's fee	1 00	
			901 92
	Balance due 18th May, 1864		$64,542 09

ZADOK HOOK, *Adm'r.*

GEORGE BARTLEY.
GEO. E. O. HOCKADAY.

Second annual settlement of the estate of Fielding Curtis, deceased, made by Zadok Hook, public adm'r of Callaway County, on the day of May, 1863.

1862.

May 20th.	To am't due estate on last settlement		$69,612 68
	Hire of Anderson for 1862		75 00
	" " Marine "		27 50
	" " Mary "		25 00
186	" " Elizabeth "		20 00
			69,760 18
	To interest on $65,000 *a* 6 p'r c't		3,900 00
			73,660 18
	By voucher No. 1	$2 60	
	" " " 2	50	

" " " 3		3 90	
" " " 4		1 60	
" " " 5		1 50	
" " " 6		10 45	
" " " 7		320 00	
" " " 8		100 90	
Interest on same, *a* 6 p'r c't		5 10	
By voucher No. 9		205 00	
" " No. 10		4,341 65	
Interest on same to date, *a* 6		397 96	
By voucher No. 11		1,214 47	
Interest on same, *a* 6 p'r c't		83 03	
By voucher No. 12		1,100 00	
Interest on same, *a* 6 p'r c't		10 08	
Carried forward		7,798 74	
Amount brought forward:	Cr.		Dr.
	7,798 74		73,660 18
By am't voucher No. —	180 70		
Interest on same, *a* 6 p'r c't	5 50		
By voucher No. 14	111 08		
187 Interest on same, *a* 6 p'r c't	5 55		
By voucher No. 15	57 26		
Interest on same, *a* 6 p'r c't	3 15		
1862, Oct'r. By expenses to Mexico for purpose of having claim allowed against est. Geo. Jolly	5 00		
By expenses to Columbia	1 50		
" revenue stamps	6 50		
Costs paid in advance on suits out of the county	7 21		
By expenses to St. Louis to get monument	15 00		
By voucher No. 16	5 25		
Commission $1,335 95, *a* 5 p'r c't	66 79		
" 6,866 49, *a* 3 p'r c't	205 99		8,475 22
Balance due estate May 21st, 1863			65,184 96

ZADOK HOOK, *Adm'r.*

GEO. E. O. HOCKADAY.
GEO. BARTLEY.

1863, May, 21st.—Approved, signed, filed, and ordered to be recorded.

W. R. WILSON, *Clerk.*

Recorded in settlement book "A," folio 108 & 809.

W. R. WILSON, *Clk.*

The following is a copy of the vouchers filed in said settlement:

Voucher No. 1.

Received of Zadok Hook, adm'r of the estate of F. Curtis, deceased, two and $\frac{66}{100}$ dollars, in full payment for services as witness one
188 day and traveling thirty-two miles.

JOHN R. BOYD.

Oct. 21st, 1862.

No. 2.

HUDSON *vs.* CURTISS. } Fee bill.

C. F. Kouns, 1 day 50

Attest: W. R. WILSON, *Clk.*

(Endorsed:) Rec'd of Z. Hook, adm'r of F. Curtis, dece's'd, fifty cents in full, Nov. 8, 1862.

C. F. KOUNS.

No. 3.

W. J. HUDSON *vs.* ESTATE FIELDING CURTIS. } Fee bill.

Oscar Collard, for three days	1 50
As witness, 48 miles' travel, *a* 5	2 40
	3 90

Attest: W. R. WILSON, *Clk.*

Received payment in full by Z. Hook, adm'r of F. Curtis.

OSCAR COLLARD.

No. 4.

W. J. HUDSON *vs.* ESTATE F. CURTIS, DEF'T. } Fee bill.

To J. R. Boyd, for 1 day as witness	50
22 miles' travel	1 10
	$1 60

Attest: W. R. WILSON, *Clk.*

SEPT. 10, 1862.

189 Received payment in full by Z. Hook, adm'r of F. Curtis, Sept. 10, 1862.

JOHN R. BOYD.

No. 5.

1862. *Zadok Hook, adm'r of F. Curtis, to Felix G. Bryan,* *Dr.*

March 15th.	To extracting tooth for Rean, a slave	50
Nov. 20th.	V. 5.50 vial volatile lenament, 50	$1 00
		1 50

Rec'd Dec'r 15th, 1862, payment in full by Z. Hook, adm'r.

FELIX G. BRYAN.

No. 6.

Rec'd of Zadok Hook, adm'r of F. Curtis, dec's'd, ten dollars and $\frac{45}{100}$ cents, my fee in suit of said adm'r vs. Right & Vaughan, in claim due estate of said Curtis, dec.

DEC. 5, 1862.

J. W. BOULWARE.

SAINT LOUIS, *May* 7, 1863.

No. 7.

Rec'd of Z. Hook, adm'r of Curtis estate, three hundred and twenty-five dollars, being an advance on monument for said Curtis, dece's'd.

R. L. ROSEBROUGH & SON.

No. 8.

The estate of Fielding Curtis, dec'd, Zadok Hook, administrator, Dr. to Henry C. Hayden.

1861. To services in Callaway circuit court in the case of Burnham vs. Hook, administrator of Curtis, on appeal from the county court $100 00

Allowed in 5th class for $100 ..... $100 00

1862.

May 19. Allowed in the 5th class of debts for the sum of one hundred dollars, with ——— at 6%, & costs.

W. R. WILSON, *Clk.*

Rec'd payment in full of the within from Zadok Hook, adm'r,
190 amounting to the sum of one hundred & $\frac{00}{100}$ dollars, this July 12, 1862.

H. C. HAYDEN.

Zadok Hook, adm'r of the estate of Fielding Curtis, deceased, *Dr.*

1861.

Sept. 27. To instituting suit, and prosecuting same to final judgment, in Callaway circuit court, Zadok Hook, adm'r of Curtis, vs. Walton Bradley et al., on note for $300 and ($39,125) $15 00

Sept. 27. To instituting suit in Callaway circuit court in favor of same vs. Purley Cheatham et al., on note $500 and in'st, (613 90) 20 00

1862.

Nov. 19. To prosecuting suit in Callaway circuit court in case Zadok Hook, adm'r of Curtis vs. Warner Criswell, adm'r of Robert Criswell 10 00

1863.

Feb'y 23d. To services in instituting suit in Callaway circuit court on note $1,395 and interest, ($1,726 40,) against W. O. Johnson et al $30 00

23 " To instituting suit against M. T. Jolly et al., on note 250 (328 33) & int 10 00

	23 "	To instituting suit against Hundley et al., on $400 and interest, $422 40	15 00
1863.			
Feb'y	23 "	To instituting suit vs. McGee et al., on note for 350 & int., ($530 10)	$15 00
Feb'y	24 "	To instituting suit vs. Herring et al., for $314 & int., 377 39	15 00
"	24	To instituting suit vs. Andrew J. Sampson et al., on note $200 & int., 252 97	$10 00
191 "		24 " To instituting suit vs. Jolly & Baker on note for 200 & int., 307 29	10 00
"	24 "	To instituting suit on note vs. John D. Nevins et al., $1,035 and $1,295 47	$25 00
Nov.	11 "	To instituting suit against Swift & Selby on note $300 & int., $374 55	15 00
"		To institute suit vs. C. C. Dawson et al., on note of $300 & int., ($367 50)	15 00
			205 00

Received payment of the above and foregoing this May 6th, 1863.
H. C. HAYDEN.

No. 10.

Rec'd, Fulton, Missouri, November 11th, A. D. 1861, of Zadok Hook, administrator of the estate of Fielding Curtis, deceased, the sum of forty-three hundred and forty-one dollars and sixty-five cents, in part of the distributive share of Ann C. Burnam, my wife, of said estate.
DAVID M. BURNAM.
ANN C. BURNAM.

Attest:
JAS. HARRIS.

No. 11.

$1,214 47. Rec'd of Zadok Hook, administrator of the estate of Fielding Curtis, deceased, twelve hundred and fourteen & $\frac{47}{100}$ dollars, as a part of our distributive share of said estate. Given under our hands this 26th day of April, 1862.
WILLIAM J. SAPPINGTON.
VIRGINIA W. SAPPINGTON.

No. 12.

Received of Zadok Hook, administrator of F. Curtis' estate,
192 eleven hundred dollars, as a part of our distributive share of said estate, this 25th day of March, 1863.
WM. J. SAPPINGTON.
V. W. SAPPINGTON.

Witness:
J. R. SHIELDS.

No. 13.

Received of Zadok Hook, adm'r of Fielding Curtis, one hundred & eighty & $\frac{70}{100}$ dollars, as a part of our distributive share in said of

said Curtis, which is to be credited upon an execution in the hands of sheriff of Boone County in favor of said Hook, as adm'r, against Nathaniel Biggs.

November 13th, 1863.

WILLIAM J. SAPPINGTON.
V. W. SAPPINGTON.

No. 14.

Received of Zadok Hook, administrator of the estate of Fielding Curtis, deceased, the sum of one hundred and eleven dollars & $\frac{8}{100}$ cents, part of our distributive share in said estate, as heirs of said Fielding Curtis, deceased. Witness our hands and *s and* this 17th day of July, A. D. 1862.

WM. J. SAPPINGTON.
VIRGINIA W. SAPPINGTON.

No. 15.

Received of Zadok Hook, adm'r of estate of Fielding Curtis, deceased, fifty-seven & $\frac{26}{100}$ dollars, as part of our distributive share in said estate. Witness our hands this June 18, 1862.

WM. J. SAPPINGTON.
V. W. SAPPINGTON.

Attest:
JAS. R. SHIELDS.

193 The above amount is the contents of a note placed in my hands by Z. Hook for collection, which note was for $49 00, dated Oct. 9, 1859, due one day after date, with ten per cent. interest from date, with a credit of five & $\frac{90}{100}$ dollars on 9th Oct., 1860.

J. R. SHIELDS.

Adm'r Fielding Curtis, deceased, to W. R. Wilson, Clk.

1862.		
	To copy of bond & county seal	$2 00
April 21.	J. W. Boulware	50
May 20.	Recording sett	1 25
'63 21st,	" "	1 50
		5 25

May 21st, 1863.

Rec'd payment,

W. R. WILSON, *Clk.*

Annual settlement of the estate of Fielding Curtis, deceased, made by Zadok Hook, adm'r, on this day of May, 1864.

1863, May 21.	To balance on settlement	$65,184 96
	" interest received	1,460 00
	" hire of Anderson, for 1863	75 00
	" " Ralph "	50 00
	" " Mary "	25 00
	" " Elizabeth "	25 00
	" " Marine "	15 00
		$66,834 96

	By voucher No. 1	261 88	
	" int. on same, at 6	37 30	
194	" voucher No. 2	755 00	
	" int. on same, at 6	16 76	
	" voucher No. 3	62 50	
	" " " 4	39 00	
	" " " 5	12 50	
	" " " 6	110 50	
	" " " 7	55 00	
	" commission on 1,350 44, at 3	40 51	
			$1,390 95
			$65,444 01
	By voucher No. 8	874 68	
	" commission on	26 24	
	" clerk's fee	1 00	901 92
	Balance due 18th May, 1864		$64,542 09

ZADOK HOOK, *Adm'r.*

GEORGE BARTLEY,
GEO. E. O. HOCKADAY.

1864, May 18, approved, signed, and ordered to be filed and recorded.
W. R. WILSON, *Clerk.*

Recorded in settlement book A, folio 241.
W. R. WILSON, *Clerk.*

The following are copies of the vouchers filed in the foregoing settlement:

No. 1.

$261 88. Received of Zadock Hook, administrator of the estate of Fielding Curtis, deceased, two hundred and sixty-one and $\frac{88}{100}$ dollars, as a part of our distributive share of said estate. Given under our hands this 28th Dec'r, 1861.

WILLIAM J. SAPPINGTON.
VIRGINIA W. SAPPINGTON.

No. 2.

195 Received of Zadok Hook, administrator of the estate of Fielding Curtis, deceased, seven hundred and fifty-five dollars, in full payment for a monument erected over the remains of said deceased by us, for which our charge was one thousand and seventy-five dollars, we having personally received the sum of three hundred and twenty dollars.

R. R. ROSEBRAUGH & SON.

December 9th, 1863.

No. 3.

Received of Zadok Hook, adm'r of Fielding Curtis, deceased, the sum of sixty-two and $\frac{50}{100}$ dollars, the same being fees for two suits on the Callaway circuit court, Hook, adm'r of Curtis, vs. Lawther and Dyer, Hook, adm'r of Curtis, vs. Culbertson et al., both debts amounting to twenty-five hundred dollars. Witness my hand this April 1st, 1864.

H. C. HAYDEN.

No. 4.

Zadok Hook, adm'r of Fielding Curtis, to H. C. Hayden, Dr., to services in Boone circuit court in suit on note belonging to said estate, principal and interest, $1,300, against Abram Ellis, James and John Wilfley, at 3 p'r c't.

Received payment this 29th Nov'r, 1863.

H. C. HAYDEN.

No. 5.

John B. Williams, editor and proprietor of the "Missouri Tele-
196 graph," a public newspaper published weekly in the city of Fulton, county of Callaway, and State of Missouri, makes oath that the following advertisement was published in said paper for four weeks consecutively, to wit: July 11, 1862, No. 43; July 18th, 1862, No. 44; July 25, 1862, No. 45; August 1st, No. 46.

JOHN B. WILLIAMS.

Sworn to before me this 30th day of December, 1863.

JOHN B. WILLIAMS.

Sworn to before me this 30th day of December, 1863.

J. B. GRANT, *J. P.*

Received of Zadock, administrator of Fielding Curtis' estate, twelve dollars and fifty cents for publishing the annexed notice.

JOHN B. WILLIAMS,
Editor and Proprietor.

December 30, 1863.

(The annexed notice referred was a mortgagee's sale of real estate.)

No. 6.

Zadok Hook, adm'r of the estate of F. Curtis, dec's'd, to John F. Baker, Dr.

1863, Dec'r. To hauling monument from Centralia to Salem church, 35 miles; weight of monument, 11,000 pounds	$58 00
To hire of hands for loading same at Centralia...	10 00
	68 00

Mr. Zadok Hook, please pay the above amount to Mr. Eli Bass, and oblige

J. F. BAKER.

Mr. Rosebrough was here some 10 or 12 days with his horse waiting upon the delivery of the different parts of said monument; I presume a fair equivalent should be allowed for same. Will $1 50 per day be too much? This added would make some $15 00 more.

	27 50
	42 50
	68 00
	$110 50

197 BOONE COUNTY, *Missouri.*

Received of Mr. Zadok Hook, administrator of the estate of Fielding Curtis, deceased, (Callaway County,) the amount in full of all demands for services rendered in the erection of the monument of Mr. Curtis, at New Salem church cemetary, being $110 50 upon a settlement this day had, this the 13th day of January, 1864.

ELI E. BASS.

No. 7.

Received of Zadok Hook, adm'r of Curtis, fifty-five dollars fees for two cases in Callaway circuit court, Hook, adm'r of Curtis, vs. Waggoner, thirty dollars, fees for two cases in Callaway circuit court, Hook, adm'r of Curtis, vs. John W. Moore, twenty-five dollars, this Ap'l 20th, 1864.

H. C. HAYDEN.

No. 8.

$874 68.] Received from Z. Hook, adm'r of F. Curtis, eight hundred and seventy-four $\frac{68}{100}$ dollars, in full of his State and county taxes, for the years 1861, 1862, and 1863, in Callaway County, Missouri..

WM. KING,
Col. C. C., Mo.,

Adm'r of Fielding Curtis, deceased, to Wm. R. Wilson, clerk, *Dr.*

1864, May. To recording settlement $1 00

Received payment in full,

W. R. WILSON,
Clk.

198 *Annual settlement of Zadok Hook, adm'r of the estate of Curtis, made at this May term of the Callaway County court,* 1865.

To balance due on last settlement		$64,542 09
To interest received		540 00
		65,082 09
By voucher No. 1	15 00	
" " No. 2	26 00	
" " " 3	2 50	
" " " 4	1,000 00	
" " " 5	408 00	
" " " 6	1 25	
" commission on $1,452 75, at 3 %	43 58	
		1,496 33
		63,586 76

ZADOK HOOK,
Adm'r.

Balance due on settlement. May 19th, 1865, sixty-three thousand five hundred and eighty-six dollars and seventy-six cents.

THOMAS ANSELL,
H. S. TURNER,
J. J. P. JOHNSON.

1865, May 19. Approved, signed, filed, and ordered to be recorded.

WM. R. WILSON,
Clerk.

Recorded in book A, folio 437, May 19, 1865.

WM. R. WILSON,
Clerk.

The following are copies of the vouchers filed in the foregoing settlement:

No. 1.

Received of Hook, adm'r of Fielding Curtis, sum of fifteen dollars in case in Audrain circuit court, of Hook, adm'r of Curtis, vs. Hossman Barker et al., this April 28th, 1865.

H. C. HAYDEN.

199

No. 2.

Received of Zadok Hook, adm'r of Fielding Curtis, the sum of twenty-six dollars, twenty-five dollars fee and one dollar stamp, in case of Hook vs. Riley, for foreclosure of mortgage in Callaway circuit court, this April 28th, 1865.

H. C. HAYDEN.

No. 3.

$250.] Received of Zadok Hook, administrator of the estate of Fielding Curtis, two and $\frac{50}{100}$ dollars, in payment of costs, in suits of said deceased against Benjamin Ficklin and John L. Martin, and Wm. L. Lundy, in which said deceased was non-suited, Feb'y 27th, 1865.

JOHN W. MOORE.

No. 4.

$1,000.] Rec'd of Zadok Hook, adm'r of the estate of F. Curtis, deceased, one thousand dollars, in part payment of our distributive share in the estate of said deceased, Nov'r 2nd, 1864.

WM. J. SAPPINGTON.
VIRGINIA W. SAPPINGTON.

No. 5.

$408 00.] Received from Zadok Hook, administrator of Fielding Curtis, four hundred and eight dollars, in full for his State, county, and military tax for the year 1864, in Callaway County, Missouri.

WILLIAM KING,
Collector.

No. 6.

Received of Z. Hook, adm'r of Fielding Curtis, $1 25 for fees, in full to this date.

W. R. WILSON,
Clerk.

200 STATE OF MISSOURI,
County of Callaway, ss:

I, William R. Wilson, clerk of the county court, & which is a court of record, in & for said county of Callaway, do certify the within and foregoing are full and complete copies of the order of the said county court, directing Z. Hook, public administrator in & for said county of Callaway, to take charge of & administer upon the estate of Fielding Curtis, deceased, together with the inventory & appraisement & sale bill of property belonging to said estate, as well as the first, second, third, and fourth annual settlement made by said Z. Hook, public administrator as aforesaid, & administrator of the estate of Fielding Curtis, deceased, made with the county court of said county, as fully as the same remains on file and of record now in my office. In witness whereof I have hereunto signed my name and affixed the seal of said court. Done at office in Fulton, this 1st day of May, A. D. 1866.

[SEAL OF SAID COURT.] WILLIAM R. WILSON,
Clk.

(5-c. rev. stamp.)

STATE OF MISSOURI,
County of Callaway, ss:

I, Thomas Ansell, presiding justice of the county court in and for said county, do hereby certify that William R. Wilson, whose genuine signature appears to the above & foregoing certificate, is, and was, at the time of making the same, the duly authorized clerk of this court, commissioned & qualified according to law, and that full faith &
201 credit are due to his official acts as such. In testimony whereof I have hereunto signed my name, & caused to be affixed the seal of said court, at office in Fulton, this 3d day of May, A. D. 1866.

[SEAL OF SAID COURT.] THOMAS ANSELL,
P. J. C. C. C.

STATE OF MISSOURI,
County of Calloway, ss:

I, William R. Wilson, clerk of the county court in & for said county, & which is a court of record, do hereby certify the Honb'l Thomas Ansell, whose genuine signature is signed to the foregoing certificate, is, and was, at the time of signing the same, the presiding justice of our said county court, duly commissioned and qualified according to law.

Witness my hand and seal of said court. Done at office in Fulton this 3d day of May, A. D. 1866.

[SEAL OF SAID COURT.] WILLIAM R. WILSON, *Clerk.*

Deposition of Abiah Guinn.

Deposition of Abiah Guinn, taken before James B. Dey, notary public and special commissioner, at Culpepper Court-House, in the State of Virginia, on the tenth day of March, in the year A. D. 1870.

1st interrogatory by notary & special commissioner. State your name, age, & residence.

Answer. Abiah Guinn; age 55 years; my residence is about three (3) miles from here, Culpepper C. H., Va.

2nd interrogatory by same. State if you had known Elizabeth
202 Guinn. If yea, is she living or dead? If dead, when & where did she die, and what relation in blood, if any, did you bear to her?

Answer. I have; she is dead; she died in 1853, in about three (3) miles from this place; I was her son.

3d interrogatory by same. State if said Elizabeth Guinn was married. If yea, who was her husband, and is he living or not? If dead, when & where did he die?

Answer. She was; Abiah Guinn, my father, who is dead; he died about the year 1835, in about three miles from this place.

4th interrogatory by same. Do you know if said Elizabeth Guinn had children? If yea, give their names, and who of them have died, if any, & when, & what descendants they left, if any. If said Elizabeth Guinn had a daughter or daughters, did they, or any of them, marry? If yea, name the husband or husbands, and whether any of said daughters is now wife or widow.

Answer. I do; she had, viz: Henderson Guinn, Matilda Collins, who was a wife of James Collins, & who is now a widow; Milton Guinn, Phares Guinn, Alfred Guinn, Arthur Guinn, Euphemia Guinn, Abiah Guinn, (myself,) & Mary Guinn, Abraham Guinn, Elizabeth Hill, wife of Wesley Hill, Tandy W. Guinn, Benjamin W. Guinn; Hen-
203 derson Guinn is dead; he died several years before my mother died; he left children; one was named John, & one was named Sarah; the names of the others I do not remember since they moved out to West Tennessee. Phares Guinn died in 1863 or in 1864; he never was married. Arthur Guinn is dead; he died before his mother, & when he was a little child. Euphemia Guinn died before her mother, whilst she was an infant less than one (1) year old. Mary Guinn died before her mother, whilst she was an infant less than one (1) year old. Abraham Guinn died several years before my mother, & left no children, never having been married. Benjamin W. Guinn died several years before my mother died; he never was married.

5th interrogatory by same. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or any matter or question in this cause?

Answer. All I have received I received through Norris; Norris said that Hook told him that was all coming to me from Fielding Curtis' estate. I had never known or had any transactions with Hook until very recently; I received a little upwards of $700 00, as well as I recollect. I know nothing more about the matter. And further the deponent saith not.

his
ABIAH + GUINN.
mark.

The witness not being able to write, I wrote his name, and he made his + mark in my presence.

J. DEY, *N. P. & S. C.*

204 *Deposition of George E. Marshall.*

Deposition of George Marshall, taken before James B. Dey, notary public and special commissioner, at Culpepper Court-House, in the State of Virginia, on the 22d day of September, A. D. 1869.

GEORGE E. MARSHALL, a witness for the complainants, being first duly sworn and cautioned, deposeth as follows:

1st question by James W. Green, counsel for complainants. Where do you reside?

Answer. Culpepper County, Va.

2nd question by same. Were you acquainted with Abraham Curtis, of Culpepper County?

Answer. I was.

3d question by same. Do you know any of his brothers and sisters? If aye, give their names and places of residence.

Answer. I know Mrs. Mary Guinn, Mrs. Susan Curtis, Mrs. Ann Payne; they are sisters of Abraham Curtis, and live in the county of Culpepper. They are the only living sisters that I know of. I knew another sister, Mrs. Elizabeth Guinn, who is now dead.

4th question by same. When did Mrs. Elizabeth Guinn die, and what children did she leave?

Answer. I do not know exactly, but my impression is, that she died some twelve or fifteen years ago. I lived in sight of her residence. She left the following children: Mrs. Matilda Collins, Mrs. Eliza-
205 beth Hill, wife of Wesley Hill, Abiah Gwinne, Tandy W. Guinne, Farish Guinne, Milton Guinne, Alfred Guinne. Farish or Phares Guinne, above named, died in the year 1864, without having been married. Henderson Guinne, Abraham Guinne, & Benjamin W. Guinne, sons of Elizabeth Guinne, removed from Culpepper about the year 1846. Henderson Guinne was married and had children before he left here, and Benjamin and Abraham were never married, and, from letters received from Henderson's family, they died before their mother.

5th question by the same. Do you know the defendant, Zadok Hook?

Answer. I do.

6th question by the same. Have you ever heard him say anything about having paid either Peter I. Norris or John J. Payne money for their services, and for what services; if aye, state all that passed?

Answer. When Mr. Hook was in this county last about two (2) months ago, Mr. Peter I. Norris asked me if I had ever heard of Mr. Hook paying himself and John Payne five hundred dollars each; I told him that I had. About that time Mr. Hook came up and said that he had paid them one hundred dollars each, and remarked that he thought one hundred dollars apiece would amply repay them for their trouble. They were acting for Mr. Hook, and I understood that it was for their
206 services in paying money over to these parties and taking their receipts.

7th question by the same. Where did that conversation occur?

Answer. At Mrs. Mary Guinne's house.

Cross-examination:

1st question by James Barbour, counsel for the defendant, Zadok Hook. Did Mr. Hook say that he had paid one hundred dollars to P. I. Norris alone, or one hundred dollars to Mr. Payne & Mr. Norris each?

Answer. One hundred dollars to each, and further deponent sayeth not.

GEORGE E. MARSHALL.

Deposition of Susan Curtis.

Deposition of Susan Curtis, taken before James B. Day, notary public at Culpepper Court-House, in the State of Virginia, on the 22d day of September, A. D. 1869.

Deposition of Susan, one of the complainants: the said Susan Curtis being first duly sworn and cautioned, deposeth as follows:

1st question by Jas. W. Green, counsel for the complainants. Where do you reside, in what county and State?

Answer. In Culpepper County, State of Virginia.

2d question by the same. Did you know the late Fielding Curtis, of the State of Missouri?

207 Answer. I did.

3d question by the same. What relation was he to you?

Answer. Brother.

4th question by the same. Was the father or mother or other ancestor of said Fielding Curtis living at the time of his death?

Answer. Neither; none were living.

5th question by the same. Had the said Fielding Curtis any descendants?

Answer. None that I know of.

6th question by the same. Was the said Fielding Curtis ever married?

Answer. He was not.

7th question by the same. What brothers and sisters had the said Fielding Curtis living at the time of his death?

Answer. Sister Anne Payne, sister Mary Guinne, and myself.

8th question by the same. Had the said Fielding Curtis any brother living at the time of his death?

Answer. He had one living brother, Abraham Curtis.

9th question by the same. Is Abraham Curtis now living or dead?

Answer. Dead.

10th question by the same. What brothers of Fielding Curtis died before him?

208 Answer. Brother Elijah & brother William Curtis.

11th question by the same. What children did your brother Elijah leave who outlived Fielding Curtis?

Answer. Benjamin Curtis, Abraham C. Curtis, Henry Curtis, & John Curtis.

12th question by the same. Did any of the children of Elijah Curtis, who died before Fielding Curtis, leave any descendants who outlived Fielding Curtis?

Answer. Elijah Curtis had only one other child, a daughter, who died without leaving any issue.

13th question by the same. What children did your brother William leave, who outlived your brother Fielding?

Answer. Virginia and Anne Curtis. He had two sons, who died before brother Fielding, without ever having been married.

14th question by the same. What sisters had Fielding Curtis, who died before him?

Answer. Sister Sarah Wiltroit, and sister Elizabeth Guinne.

15th question by the same. What children did your sister Elizabeth Guinn leave?

Answer. Abiah Guinne, Phares Guinne, Alfred Guinne, Milton Guinne, Matilda Collins, Elizabeth Hill, and Tandy Guinne.

16th question by the same. Had your sister Elizabeth any other children who died before her?

209 Answer. One by the name of Abraham; one who died before she did, leaving no descendants, and some other small children whose names I do not recollect.

16th question by the same. Did you ever know Henderson Guinn?

Answer. I did.

17th question by the same. Whose son was he?

Answer. He was the son of Abiah Guinn and my sister Elizabeth.

18th question by the same. Is Henderson Guinne living or dead?

Answer. Dead.

19th question by the same. Did he die before or since Fielding Curtis, and did he leave any children?

Answer. He died before Fielding Curtis, and left five or six, whose names I do not know.

20th question by the same. Did your sister Wiltroit leave any children now living?

Answer. She did.

21st question by the same. What are the names of your sister Wiltroit's children?

Answer. Curtis, Milton, Ezekiel, Sarah, wife of Simms, Susan, and several others whose names I do not remember.

22d question by the same. In what State do you, Mary Guinne, Ann Payne, Henry Curtis, Abraham C. Curtis, Matilda Collins, Abiah Guinne, Tandy W. Guinne, and Elizabeth Hill live?

210 Answer. In Virginia.

23d question by the same. What is your age?

Answer. In my sixty-ninth year.

24th question by the same. Can you read and write?

Answer. I can.

25th question by the same. Do you know Zadoc Hook?

Answer. I do.

26th question by the same. Is he present in this room now?

Answer. Yes.

27th question by the same. When did you first become acquainted with Mr. Hook?

Answer. Three or four years ago.

28th question by the same. Did he ever pay you any money, either in person or through another, on account of your interest in the estate of your brother Fielding Curtis?

Answer. He did, through Mr. John Payne.

29th question by the same. What did Mr. Hook tell you your interest in Fielding Curtis' estate was worth?

Answer. I do not remember now what he told me what it was worth. He agreed to give me thirty-eight hundred dollars; afterwards he agreed to give each of us five thousand dollars, by our giving him a refunding bond for twelve hundred dollars each.

211 30th question by the same. Did you give him said refunding bond, and did he pay you the five thousand dollars through Mr. Payne?

Answer. I did; and he paid me five thousand dollars through Mr. Payne. I received that amount.

31st question by the same. At whose house did you first meet with Mr. Hook?

Answer. At sister Anne Payne's.

32nd question by the same. How did you first hear that Mr. Hook was in Culpepper?

Answer. By Sarah Payne & Mr. Hoggany, or some such name that I cannot call, coming down to let me know that Mr. Hook was at sister Anne Payne's.

33rd question by the same. When you met Mr. Hook at your sister Payne's, who else was there?

Answer. Sister Guinne, Matilda Collins, Harriet Curtis, Mr. Peter I. Norris, John Payne. I do not recollect of any others being present.

34th question by the same. For what purpose did you all meet at your sister Payne's?

Answer. To find out what we would get from brother Fielding's estate.

35th question by the same. What did Mr. Hook say at your sister Payne's about Fielding Curtis' estate?

212 (The counsel for defendant, Mr. Hook, excepts to this question from the fact that it is substantially the same as one heretofore asked and answered by same witness.)

Answer. If the Yankees got this business in hand, we would not get anything.

36th question by the same. Did Mr. Hook exhibit or show any statement showing what the estate of Fielding Curtis was worth?

Answer. He did not.

37th question by the same. Did he show any statements or accounts of any kind relating to the estate of Fielding Curtis?

Answer. He never showed me any.

Cross-examination:

1st question by James Barbour, counsel for the defendant, Z. Hook. After the other parties entered into arrangements similar to yours, did not Mr. Hook voluntarily return to you the refunding bond which you have mentioned?

Answer. It was said that he returned it, but I have never seen it after I signed it.

2nd question by the same. Are you not satisfied that it was delivered up by Mr. Hook?

Answer. I was, and am now satisfied that it was given up.

213 3d question by the same. At the meeting of the parties whom you have named at your sister Payne's, was not a letter from Mr. Hook to Abraham Curtis, written in March, 1861, referred to as stating the amount of the assets of the estate, at the time it came in the hands of the administrator, at about sixty-six thousand dollars, ($66,000,) besides some slave property?

Answer. I do not remember anything about the letter; my memory is very bad.

4th question by the same. Who was your advisor at the meeting at your sister Payne's?

Answer. I had no particular advisor. I was willing to do anything that the balance was willing to do.

5th question by the same. Among the parties there assembled, were there not both men and women whom you regarded as fully competent to manage their interest in this business?

Answer. I reckon so.

6th question by the same. After a full and free consultation among you all, was not a contract between yourselves and Mr. Hook agreed upon and reduced to writing?

Answer. I never made any contract between me and Mr. Hook. I do not know what the balance did.

214 7th question by the same. Did you not sign your mark to a written paper then and there, which was also signed by the other parties?

Answer. I did.

8th question by the same. Did not all the family connections who were there that day sign the same paper?

Answer. My sisters did.

9th question by the same. Did not Mr. Norris and Mr. John J. Payne sign the same paper?

Answer. Indeed I cannot tell.

10th question by the same. Was it not under this agreement that you received the five thousand ($5,000) dollars which you have mentioned?

Answer. It was.

11th question by the same. Was not this agreement signed by you and your sisters after a free and full consultation among yourselves and your friends who were present?

Answer. It was.

12th question by the same. Did you not request Mr. John J. Payne to go with Mr. Hook to Washington City and get your money, and did he not receive for you, within a few days thereafter, five thousand ($5,000) dollars?

Answer. I did.

13th question by the same. Did not your sisters, after signing the same paper, send on also, and receive from Mr. Hook the sum of five thousand dollars each?

215 Answer. I expect they did. I heard them say so.

14th question by the same. When did you first hear that you had considerable interest in the estate of Fielding Curtis?

Answer. I reckon it was some time in 1861.

15th question by the same. How did you hear?

Answer. I think it was through brother Abraham.

16th question by the same. Did you understand from him that it was a large estate to be divided among your family connections?

Answer. I did.

17th question by the same. Was not your brother Abraham writing letters to Missouri, and receiving letters, on the subject of your family interest in that estate of Fielding Curtis?

Answer. I cannot tell.

18th question by the same. Did you ever hear your brother Abraham say what was the amount of the estate of Fielding Curtis to be divided among you all?

Answer. I do not recollect ever hearing him say anything about the amount; and further the deponent saith not.

SUSAN CURTIS.

Deposition of Peter J. Norris.

Deposition of Peter J. Norris, taken before James B. Dey, notary public, at Culpepper Court-House, in the State of Virginia, on the
216 23d day of September, A. D. 1869.

PETER J. NORRIS, a witness called by the complainants, being first duly sworn and cautioned, deposeth as follows:

1st question by James W. Green, counsel for the complainants. In what county and State do you reside?

Answer. In Culpepper County, State of Virginia.

2nd question by the same. Do you know the defendant, Zadoc Hook?

Answer. I do.

3rd question by the same. When did you first become acquainted with him?

Answer. In 1865.

4th question by the same. Look at the paper now shown you, marked Exhibit No. 1, and state all you know about it.

Answer. This is the paper signed in my presence by Mary Guinn, Anne

Payne, and Susan Curtis; witnessed by myself, John J. Payne, and John A. Hockaday. This was delivered to Mr. Hook after he paid the money, being retained by myself and John J. Payne until he paid the money. It was executed at the house of Mrs. Anne Payne. I think it was written by Mr. Hockaday. We retained it until Mr. Hook paid the money. It was then delivered to Mr. Hook, about a week or two
217 after its date. When he came on to Washington City to settle with the other heirs, in the month of August, I think it was in the same year, Mr. Payne and myself remarked to Mr. Hook that the parties were dissatisfied with giving a refunding bond. Mr. Hook then gave up the refunding bond, which is marked Exhibit No. 1. The signature "Peter J. Norris," subscribed to said paper, is in my own handwriting.

5th question by the same. Did you know Mr. John A. Hockaday?

Answer. I became acquainted with him at Culpepper C. H. in June, 1865.

6th question by the same. Who introduced you to him?

Answer. Mr. Hook.

7th question by the same. Did Mr. Hook ever pay you any money for any services rendered him? If aye, state how much and what were the services.

Answer. Mr. Hook paid me one hundred dollars for going around to see the heirs of Fielding Curtis and obtain a settlement on the same terms as Mrs. Mary Guinne, Mrs. Anne Payne, & Mrs. Susan Curtis had settled. The other heirs referred to by me were Mrs. Matilda Collins, Abiah Guinne, Tandy W. Guinne, Abraham C. Curtis, Henry B. Curtis, Elizabeth Hill, wife of Wesley Hill; and there were some others, to whom I wrote, viz: Benjamin Curtis, Alfred Guinne, and Milton Guinne.

218 8th question by the same. Where did the first conversation occur between you and Mr. Hook on the subject of his paying you for your services?

Answer. I think it was in Baltimore. Mr. Hook requested me to see these parties, and I told him it would take time and expense. He told me he was willing to pay me for that, and gave me one hundred dollars, stating that he hoped this amount would repay me for my trouble. I told him that it would.

9th question by the same. Did any of the other parties whom you have named execute a similar refunding bond to Mr. Hook as the one executed by Mrs. Payne, Mrs. Guinne, and Mrs. Curtis?

Answer. Some of them did; but it was never delivered to Mr. Hook, having been left with me.

10th question by the same. What did Mr. Hook say about the estate of Fielding Curtis, its value and its losses, at the interview when Mrs. Mary Guinne, Mrs. Anne Payne, and Mrs. Susan Curtis executed the refunding bond before mentioned?

Answer. He said that the estate was not entirely settled up, but that, as nearly as he could approximate, it was worth about thirty-eight hundred dollars to each full legatee. He said that the estate had sustained losses, but the exact amount I do not recollect of his telling the
219 parties present at that interview.

11th question by the same. Why did he agree to pay to each full legatee then present the sum of five thousand dollars?

Answer. The parties thought, from previous information, that the estate was worth more money, and they were not willing to take the thirty-eight hundred dollars.

12th question by the same. Did Mr. Hook exhibit to the said parties any statements, accounts, or settlements showing the value of the estate of Fielding Curtis or its losses?

Answer. Not that I know of.

13th question by the same. What was the pecuniary situation of Mary Guinne, Anne Payne, and Susan Curtis in June, 1865, prior to the 19th of said month?

Answer. I think it was extremely bad.

14th question by the same. Were any of them at that time married, or were they all widows?

Answer. They were all widows.

15th question by the same. How old is Mrs. Mary Guinne, and how old is Mrs. Anne Payne?

Answer. I do not know their exact age, but I suppose they are seventy years of age or upwards.

16th question by the same. What connection are you to Mrs. Mary Guinne?

Answer. I am a son-in-law.

16th question by the same. Did Mr. Hook say where Mr. Hockaday was from?

220 Answer. He said he was from Fulton, Missouri.

17th question by the same. Did he say what brought Mr. Hockaday to Virginia?

Answer. He said that he came as company for him.

17th question by the same. Was Abraham Curtis living in June, 1865?

Answer. He was.

18th question by the same. Was he ever in the company of Mr. Hook when you were present?

Answer. He was not. At that time he was living in the adjoining county, Orange.

Cross-examination:

1st question by James Barbour, counsel for the defendant. What is your business occupation?

Answer. I have been a merchant, but am not now engaged in any business.

2nd question by the same. What is your age?

Answer. I am upwards of forty (40) years of age.

3d question by the same. For how many years have you been engaged in mercantile business?

Answer. About twelve (12) years on my own account, and employed as clerk by others since the age of seventeen (17) years.

4th question by the same. In what State besides Virginia have you done business?

Answer. In Maryland, Missouri, and the Territory of New Mexico.

221 5th question by the same. How long did you live in the State of Missouri?

Answer. Six or seven years.

6th question by the same. What is the connection between you and George E. Marshall, one of the witnesses examined on yesterday?

Answer. We married sisters, daughters of one of the complainants—Mrs. Mary Guinne.

7th question by the same. What relation is John J. Payne to the complainant, Mrs. Anne Payne?

Answer. Son.

8th question by the same. Was a letter which Mr. Hook had written to Abraham Curtis in 1861, stating the amount of the estate of Fielding Curtis, referred to by any of the parties during the negotiations between Mr. Hook and the complainants?

Answer. It was.

9th question by the same. What did that letter state to be the amount of the estate of Fielding Curtis, as it had been inventoried in Missouri?

Answer. It was stated at the interview at Mrs. Payne's that Abraham Curtis had received a letter from Mr. Hook in 1861 stating that the estate was worth upwards of sixty thousand ($60,000) dollars, besides some slaves. This statement was made by John J. Payne, and admitted by Mr. Hook, in the presence of the complainants. This occurred before the contract was entered into.

222 10th question by the same. In your answer to the 10th question you say that Mr. Hook spoke of the losses which the estate had sustained; did he not mean losses which had been occasioned by the embarrassed condition of the country during the four years since the estate had been committed to him?

Answer. I so understood it.

11th question by the same. Did he not state to the parties that, in consequence of these losses and embarrassments, he had come to Virginia to make the fairest and best adjustment for all parties that he could?

Answer. Mr. Hook remarked that he came to Virginia to make a settlement on the best terms he could; that he had sustained losses by the management of the estate. He remarked also that he wished the affair settled up.

12th question by the same. Did not he say that the thirty-eight hundred ($3,800) dollars to which you refer in the same answer was the amount of what money he had in hand, and paper which he knew to be good, stating that there was a larger amount of outstanding debts due the estate?

Answer. He said that the estate was not settled. He said that there were a great many debts, which he expected to lose.

223 13th question by the same. Did he not state that there were some of these debts which he might save if he had control of them, so as to give indulgence and make compromises, which he feared would be lost if rigidly enforced?

Answer. Mr. Hook stated that there were some debts of that character, that he thought he could save, but which, if enforced immediately, would be a sacrifice to the parties interested in the estate.

14th question by the same. Have you not repeatedly, since that adjustment, expressed yourself as satisfied, and advised the parties to let it stand?

Answer. So far as I was concerned, I was satisfied. I do not remember ever having given any advice about it.

15th question by the same. Was the one hundred ($100) dollars, which in your answer to complainants' 7th question, you stated Mr. Hook paid you for going around, anything more than a very moderate compensation for the labor which you then undertook to perform for him?

Answer. I thought it was a moderate compensation.

16th question by the same. Were not the residences of the different parties you had to see scattered over a considerable territory, in several counties in this portion of Virginia?

Answer. They were; some lived at a considerable distance; one lived at least 150 miles from my residence.

224 17th question by the same. Would the sum of one hundred ($100) dollars have induced you to have advised any one of these family connections of yours to enter into an arrangement with Mr. Hook, that would do them any injustice or injury?

Answer. It would not.

18th question by the same. Did you induce many, or all the rest of them to execute a contract similar to the one which the mother and the aunts of your wife had executed?

Answer. I got Mrs. Matilda Collins, Abiah Guinne, Tandy W. Guinne, Elizabeth Hill, Abraham C. Curtis, Henry B. Curtis, Benjamin Curtis, Milton Guinne, and Alfred Guinne, to sign such contract as is mentioned in the question. I do not know whether or not Alfred Guinne signed this contract, but he sent me a power of attorney to act for him.

19th question by the same. About how long were you engaged in this business?

Answer. More than a month, I reckon.

20th question by the same. Did you not consider this arrangement with Mr. Hook to be so advantageous to these parties, that you charged some of them a commission for getting the money?

Answer. I thought the money would be very acceptable to them, and they thought so too. I told some of them that I would charge them five per centum (5°|₀) when I undertook it.

225 21st question by the same. You say in your answer to complainants' 6th question that Mr. Hook introduced you to Mr. Hockaday; do you not remember, after having your memory refreshed by this question, that you called on Mr. Hockaday during Mr. Hook's temporary absence from this town, and made his accquaintance because you had known his brother in Missouri?

Answer. I do; I called on Mr. Hockaday, who afterwards introduced me to Mr. Hook.

22d question by the same. You have stated that you were acting on this subject for some of these parties; were you not transacting this busines with Mr. Hook especially for your wife's mother and her aunts?

Answer. I was representing my wife's mother, Mrs. Mary Guinne.

23d question by the same. In the negotiations with Mr. Hook, before the contract was signed, were you not acting for Mrs. Guinne, Mrs. Curtis, and Mrs. Payne, the complainants, or at least were not you and John J. Payne together acting for these ladies?

Answer. We were acting for them, and doing the best we could for their interest.

24th question by the same. From first to last, how long were you engaged with Mr. Hook on the subject, before the contract was closed?

226 Answer. It was during the day at Mrs. Anne Payne's; we were several days getting the parties together.

25th question by the same. How long was it after Mr. Hook arrived here; was it before you assembled the parties, and during this interval was not this business the subject of several conversations between you and Mr. Hook?

Answer. Several days, and during the interval, the business was several times talked of between Mr. Hook and myself.

Reëxamination by complainants:

1st question by complainants' counsel. Did Mr. Hook exhibit to you

or John J. Payne any statements, accounts, or settlements showing the value of the estate of Felding Curtis or its losses?

Answer. None that I recollect of.

Re-cross-examination?

1st question by defendants' counsel. Were you not aware that Mr. Hook had written a letter in 1861 to Abraham Curtis, then a resident of this county, and the oldest male member of the family connection, stating the amount of the inventory of the estate at more than sixty thousand ($60,000) dollars besides some slaves?

227 Answer. I was; I have never seen the letter, but have heard it spoken of by the family. Mr. Abraham Curtis told me that he had received such a letter, and had gotten Mr. T. O. Flint to answer it in the name of Abraham Curtis, and was about to send Mr. T. O. Flint to look after the business when the war commenced. Mr. Flint was clerk of the circuit court of Culpepper County, and died in the year 1866.

And further the deponent sayeth not.

PETER J. NORRIS.

Deposition of Mary Guinn.

Deposition of Mary Guinn, taken before James B. Dey, notary public, at Culpepper Court-House, in the State of Virginia, on the 24th day of September, 1869.

MARY GUINNe, one of the complainants, being first duly sworn and cautioned, deposeth as follows:

1st question by James W. Green, counsel for the complainants. In what county and in what State do you reside?

Answer. In Culpepper County, State of Virginia.

2d question by the same. What is your age?

Answer. Seventy-four, (74.)

3d question by the same. What is the age of your sister, Anne Payne?

Answer. About eighty years old, I think.

4th question by the same. Was your brother, Abraham Curtis, older or younger than yourself?

228 Answer. He was older.

5th question by the same. What is the state of health of your sister, Anne Payne?

Answer. Very feeble.

6th question by the same. Can you read and write well?

Answer. Tolerably well.

7th question by the same. What was your situation, in the way of having the comforts and necessaries of life, in June, 1865, prior to the 19th day of said month?

Answer. Very bad.

8th question by the same. What was the situation of your sister, Anne Payne, in that respect at that time?

Answer. Very bad.

9th question by the same. What was the situation of your brother, Abraham Curtis, in that respect at that time?

Answer. Very bad.

10th question by the same. What was the situation of your sister, Susan Curtis, in that respect at that time?

Answer. It was very bad too.

11th question by the same. Were you present at your sister, Anne

Payne's, in June, 1865, at the interview beween Mr. Zadoc Hook, Susan Curtis, Peter J. Norris, John J. Payne, and others?

229 Answer. I was.

12th question by the same. Did Mr. Hook show any statements, accounts, or settlements, showing the value or losses of the estate of Fielding Curtis?

Answer. He did not.

13th question by the same. To whom did you entrust the settlement with Mr. Hook of your interest in the estate of Fielding Curtis?

Answer. To Mr. Peter J. Norris, my son-in-law.

14th question by the same. Did Mr. Hook say anything about the lost debts of Fielding Curtis' estate?

Answer. He did; he said the lost debts were considerable.

15th question by the same. Did he say what your interest in your brother Fieldings Curtis' estate was worth?

Answer. Thirty-eight hundred ($3,800) dollars.

16th question by the same. How much did he pay you for your interest in the estate?

Answer. Five thousand ($5,000) dollars.

17th question by the same. Did you give him a refunding bond?

Answer. I did.

18th question by the same. Do you know what the bond required you to refund?

Answer. Twelve hundred ($1,200) dollars.

230 19th question by the same. Do you know in what event you were to refund to Mr. Hook the twelve hundred ($1,200) dollars.

Answer. If he paid us too much.

20th question by the same. Do you know whether there were any witnesses to that bond? if so, state who they were.

Answer. I do not.

21st question by the same. Would you know that bond if it were shown you?

Answer. I don't know that I would.

22d question by the same. Do you know who wrote the bond?

Answer. Mr. Hockaday.

23d question by the same. Where was that bond written?

Answer. At sister Anne Payne's.

24th question by the same. Do you know where Mr. Hockaday was from?

Answer. From Missouri, I suppose.

Cross-examination:

1st question by James Barbour, counsel for the defendant, Hook. Which was the elder, Abraham Curtis or Fielding Curtis?

Answer. Fielding Curtis was the elder, and Abraham next to him.

2d question by the same. Was your sister Mrs. Payne older or

231 younger than Abraham, your brother?

Answer. Older by about four (4) years. Fielding was born between the two.

3d question by the same. How much older than you was Abraham?

Answer. Twenty-one (21) or twenty-two (22) months.

4th question by the same. In what year were you born?

Answer. In A. D. 1794.

5th question by the same. Which of your sons-in-law were residing in Culpepper County in June, 1865?

Answer. Only Peter J. Norris. My son-in-law, George E. Marshall

was then living in Orange County, adjoining Culpepper County, and my son-in-law, R. M. Crump, was then living in Buckingham County, Virginia.

6th question by the same. Did not your sons-in-law, George E. Marshall and R. M. Crump, both own farms in Culpepper County in June, 1865?

Answer. They did.

7th question by the same. Were you then residing on the farm of your deceased husband, in which you have a dower-estate?

Answer. I was.

8th question by the same. How many acres in that farm?

232 One hundred and twenty (120) acres in my dower-land, and I own sixty (60) acres in my own right.

9th question by the same. How far from this town is your farm, and how does its value compare with the adjoining lands?

Answer. Three (3) miles; very well; about equal to the adjoining farms.

10th question by the same. Do you know at about what price per acre this farm was appraised?

Answer. I don't remember; it is worth about thirty ($30) dollars per acre.

11th question by the same. Is the farm which your son-in-law George E. Marshall owned in June, 1865, and on which he resided before the war, and resides now, near yours?

Answer. It is about two (2) miles distant.

12th question by the same. What is the probable size of that farm, and how does its value per acre compare with yours?

Answer. I reckon between two (2) and three (3) hundred acres, and about the same value as mine per acre.

13th question by the same. You say that your brother Abraham's situation was very bad in respect to having the comforts and necessaries of life. Do you mean by that, that he had no property or monies at interest?

233 Answer. He had money at interest, but the stay-law was in force, which prevented the collection of the principal of debts.

14th question by the same. Did he not have a considerable amount of money loaned out at interest?

Answer. Not that I know of.

15th question by the same. Was not your brother, Abraham, generally regarded as a judicious and successful business man?

Answer. Well, tolerably so.

16th question by the same. Were you not informed about a letter, which Mr. Hook wrote to your brother Abraham in 1861, stating the amount of Fielding Curtis' estate to be inventoried at more than sixty-five thousand ($65,000) dollars, besides some slave property?

Answer. I was.

17th question by the same. Was not this letter referred to by you all in your negotiations with Mr. Hood in 1865?

Answer. Not that I remember.

18th question by the same. In your answer to the complainants' 14th question, you say that Mr. Hook said that the lost debts were considerable; did he mean that some of the monies which he had loaned out as administrator were in doubtful hands?

Answer. I suppose he meant that.

234 19th question by the same. You say in answer to the 15th question by the same that Mr. Hook said that your interest in Field-

ing Curtis' estate was worth the sum of thirty-eight hundred ($3,800) dollars; do you refer to the conversation at your sister Payne's, when Mr. Norris and the other parties were present?

Answer. He told me in my own house it was worth that.

20th question by the same. Did he tell the parties who met at your sister Payne's the same thing?

Answer. I did not hear him say so, but understood from the others that he did say so.

21st question by the same. Mr. Norris, one of your witnesses, stated in his deposition on yesterday that Mr. Hook said that besides this thirty-eight hundred ($3,800) dollars, there were debts which he expected to lose, which might be saved; is this the statement of Mr. Hook, to which you refer?

Answer. He said that there were some bad debts which he feared he would lose. Mr. Norris was attending to the business for me, and I did not pay particular attention to it.

22d question by the same. When you gave your refunding bond, was it agreed that in case all the parties came to a settlement like
235 yours, so as to make it full and final, your refunding bond should be returned, and was it not so returned?

Answer. I do not remember about the agreement, but am satisfied that the bond was returned.

23d question by the same. Was it voluntarily sent back by Mr. Hook, and who received it for you?

Answer. I paid nothing for getting it back. Mr. Norris told me that he got it back from Mr. Hook.

24th question by the same. Did not Mr. Hook request you to call your sons-in-law together before you arranged your business with him—that he preferred they should be present?

Answer. He did, but it was so that only one, Mr. Norris, could be present, and I referred it to him.

25th question by the same. Was Mr. Norris a merchant by business occupation, and did you have full confidence in him?

Answer. He was, and I have full confidence in him.

Reëxamination:

1st question by complainants' counsel. In June, 1865, how did it happen that you were so badly off for the comforts and necessaries of life, owning a farm as you did?

Answer. The Union army destroyed all I had about the house and farm. I had left home and gone to a neighbor's—Mrs. Marshall's.
236 Further this deponent sayeth not.

MARY GUINN.

Deposition of John J. Payne.

Deposition of John J. Payne, taken before James B. Dey, notary public, at Culpepper Court-House, in the State of Virginia, on the 24th day of September, 1869.

Deposition of JOHN J. PAYNE, another witness called by the complainants; the said John J. Payne, being first duly sworn and cautioned, deposeth as follows:

1st question by James W. Green, counsel for complainants. In what county and State do you reside?

Answer. In Madison County, State of Virginia, adjoining Culpepper County, Virginia.

2nd question by the same. Whose son are you?

Answer. Of Anne Payne, of Culpepper County.

3d question by the same. Do you know the defendant, Zadoc Hook?

Answer. I do.

4th question by the same. Look at the paper marked "Exhibit No. 1," now shown you, and state all you know about it.

Answer. I received a letter from my mother or Mr. Hook, written by the request of my mother, to come down from Madison County
237 to her house in Culpepper County; that Mr. Hook wanted to make a settlement of her brother Fielding's estate. When I got there, Mr. Hook reported to me his business. I asked him what he proposed to do. He reported thirty-eight hundred ($3,800) dollars was as much as he could pay each legatee. I consulted with my mother, and told her that I thought it best not to make any settlement, for the reason that she knowed nothing about what the estate was worth. She stated that Mr. Hook said that the estate had suffered very much by the effect of the war; that she thought it was best to make the best settlement that we could. Myself and Mr. Norris, who was acting for his mother-in-law, Mrs. Mary Guinne, concluded that if he, Mr. Hook, would pay five thousand ($5,000) dollars to each legatee, we would make the compromise. He said that was more than he could pay. We then consulted the legatees present, viz, my mother, Mrs. Mary Guinne, Mrs. Susan Curtis, and they concluded if Mr. Hook would pay them four thousand ($4,000) dollars each, that they would be satisfied; that they had rather have that amount—the four thousand ($4,000) dollars—at that time than double the amount five years from then. Mr. Norris made another proposition to Mr. Hook, that the parties would give him a re-
238 funding bond of twelve hundred ($1,200) dollars each, if he would pay them five thousand ($5,000) dollars each. Mr. Hook, after considering the matter, concluded he would do so, but they must give him time to settle up the estate. I think the length of time was five (5) years. Mr. Hockaday drawed the refunding bond. Mrs. Mary Guinn, Anne Payne, and Susan Curtis executed it. Peter J. Norris, John J. Payne, (myself,) and John A. Hockaday witnessed it. The signature of John J. Payne, subscribed as a witness, is in my own handwriting. I saw Mr. Norris and Mr. Hockaday witness it. Mr. Norris and myself held the refunding bond and the contract until the five thousand ($5,000) dollars for each of the three (3) was paid to us in Washington City by Mr. Hook; $10,000 being paid to me for my mother and Mrs. Curtis, and $5,000 to Mr. Norris for Mrs. Mary Guinn. We then delivered the refunding bond and the contract to Mr. Hook. I have never seen the refunding bond since that time until now. Mr. Norris, Mr. Hook, and myself went from Washington to Baltimore together, and there Mr. Hook requested us to see the other legatees in Virginia; that he would settle with them on the same terms that he had settled with my mother and aunt, if they were willing to do
239 so. I saw the legatees in Orange and Albemarle Counties. They readily agreed to make the settlement. As soon as they all signed, I informed Mr. Norris of the fact. He then wrote to Mr. Hook that they had all signed. Mr. Hook then wrote back to Mr. Norris that he would meet us in Baltimore on a certain day. Mr. Norris and myself met him there on the day appointed; and there we received the money for the legatees that had signed the agreement; there we delivered the contract signed by the said other parties. I remarked to Mr. Hook that the parties said if he would give up the refunding bond they would be perfectly satisfied; that they had no doubt but that he had the ad-

vantage of them. Mr. Hook then remarked that he would do so, but that he would have to give long time on a great many of the bonds due the estate; that he knowed all of the parties, and would have to indulge some of them for years in order to get the money from them; that he knowed more about the estate than any one else; he knowed well the estate had suffered very much by the war.

5th question by the same. Did Mr. Hook at any time show you or any of the parties, to your knowledge, any statements, accounts, or settlements, showing the value or losses of the estate of Fielding Curtis?

240 Answer. He did not. At the interview at my mother's, in the presence of all the parties there, I asked Mr. Hook if he had not written a letter in 1861 to my uncle, Abraham Curtis, about what he thought the estate was worth, and if he didn't state in that letter that the estate was worth sixty odd thousand ($60,000) dollars and some slaves. I think he said he did write such a letter; and he also said in the course of the conversation that the estate had lost heavily during the war, or by reason of the war.

6th question by the same. How far from Culpepper Court-House does your mother live, and how far your aunt, Susan Curtis?

Answer. My mother lives about four (4) miles, and my aunt Susan about fifteen (15) miles.

7th question by the same. How were your mother, your aunt Mary Guinn, your aunt Susan Curtis, and your uncle Abraham Curtis situated in June, 1865, prior to the 19th day of the month, in respect to having the comforts and necessaries of life?

Answer. I know very little about it, except about my mother, who was destitute. My uncle Abraham was a bachelor, but had some

241 means; but do not know whether these means were collectable. My aunt, Mrs. Guinn, and Mrs. Payne, had good homes and lived on their own farms; but whether they had anything on their farms but the land, I do not know.

8th question by the same. Did you say anything, just before parting with Mr. Hook, about the parties being after him if he had taken the advantage of them? If you did, what did you say, and what was his reply?

Answer. I think I remarked to Mr. Hook that the thing was all settled satisfactorily, but if the legatees found out he had got the advantage of them, they would be after him with a sharp stick. His reply was he wanted them to do so; that he had used every effort to save the estate; that he believed that he had paid more to the legatees than any other man would have paid.

9th question by the same. Was Mrs. Matilda Collins present at the interview with Mr. Hook at June, 1865?

Answer. She was not there.

Cross-examination:

1st question by James Barbour, counsel for the defendant, Mr. Zadoc Hook. What is your age and business occupation?

242 Answer. I am forty-eight (48) years old and my business occupation is that of a farmer; I have been a merchant for some four (4) or five (5) years in the course of my life, from 1857 to 1861 or 1862. I was farming in Madison County in 1865, when Mr. Hook visited this State.

2d question by the same. In the interview between Mr. Hook and your family connection at your mother's in June, 1865, did Mr. Hook fail to answer any questions, or give any information that any of you required?

Answer: He did not.

3d question by the same. Have you now any reason to believe that Mr. Hook was then unfair or uncandid in any statement that he made to you, or in his answers to the various questions which were then propounded to him?

Answer. I thought he was candid in his answers, and did not give us any false information, as far as I know.

4th question by the same. Is not your aunt, Mrs. Mary Guinn, a lady still in vigorous health, who has been coming to the place on horseback for several days, and attending the taking of the depositions in this case?

Answer. She is in vigorous health, and came here part of the time on horseback, and part of the time in a carriage. I mean that her
243 health is vigorous for a person of her age, as she rides about on horseback a great deal. I notice no decay in her mind. Further the deponent sayeth not.

JOHN J. PAYNE.

Deposition of Samuel R. Rixey.

Deposition of Samuel R. Rixey, taken before James B. Dey, notary public, at Culpepper Court-House, in the State of Virginia, on the 25th day of September, A. D. 1869.

SAMUEL R. RIXEY, a witness called by the complainants, being duly sworn and cautioned, deposeth as follows:

1st question by James W. Green, counsel for the complainants. In what county and in what State do you reside, and what is your occupation?

Answer. In Culpepper County, State of Virginia; by profession, a physician.

2d question by same. Do you know Mrs. Anne Payne, of Culpepper County? if aye, state what you know about her pecuniary condition prior to June, 1868, and her present state of health.

Answer. I know Mrs. Payne. Prior to June, 1865, I know that she was very poor, and from the time I came here in 1854 until 1865 my medical bills were charged to and paid by the county for attendance on her as a physician; she was sick for about six (6) weeks during
244 the last summer, but is now going about. She has hernia, and has had it since I knew her. My medical bills for attendance were not large.

Cross-examined:

1st question by James Barbour, counsel for defendant. Were you not a surgeon in the confederate army service during the war?

Answer. I was from the 10th September, 1861, until the close of the war in 1865.

2d question by same. When did this service take you from the county of Culpepper?

Answer. In April, 1862, I was taken away from here and returned in August, 1862, and remained on post service until December, 1862; then joined the army of Northern Virginia near Fredericksburg; returned here on furlough about the middle of January, and remained about two (2) months, at the expiration of which time I reported for duty in Richmond, Va., and was ordered to North Carolina, where I remained until the close of the war, except when on furlough.

3d question by same. How far was the residence of Mrs. Payne from that of her brother, Abraham Curtis, and her sister, Mrs. Mary Guinn?

Answer. About the same distance—2½ miles from each.

245 4th question by same. Did not Abraham Curtis own a good farm, and was he not a man of considerable means?

Answer. He owned a very good farm near Culpepper Court-House; he was a very penurious man—so much so that he refused to send for a doctor on his death-bed; his sister, Mrs. Guinn, sent for me, and, during my attendance, he complained of the high price of brandy; he had been in feeble health for a long time before his death; he sold his farm in 1857 or 1858, and, after that time, hired about with his friends, but died at his sister's, Mrs. Guinn's.

5th question by same. Was he more than ordinarily close and cautious in his dealings and business contracts?

Answer. I have never had any dealings or contracts with him, except when he was sick.

6th question by same. What was his reputation in that respect?

Answer. It was that of being a very close man; I know he refused to assist his sister, Mrs. Payne, when in distress.

7th question by same. Up to the time that you left here, in 1862, to join the Confederate States army, was Abraham Curtis regarded as a prosperous and successful man in his business affairs?

246 Answer. He was considered a money-saving man, and accumulated a great deal of property, but to what extent I do not know.

8th question by same. Was he a man of ordinary intelligence?

Answer. He was, so far as I could judge.

9th question by same. Was not Mrs. Mary Guinn in possession of a good farm, and in easy circumstances?

Answer. She owned a very good farm, and lived comfortably.

Further deponent sayeth not.

SAM'L R. RIXEY.

Deposition of Fayette M. Latham.

Deposition of Fayette M. Latham, taken before James B. Dey, notary public, at Culpepper Court-House, in the State of Virginia, on the 25th day of September, A. D. 1869.

FAYETTE M. LATHAM, another witness for the complainants, being first duly sworn and cautioned, deposeth as follows:

1st question by James W. Green, counsel for the complainants. In what county and State do you reside?

Answer. In the county of Culpepper, State of Virginia.

2d question by same. Are you acquainted with the defendant,

247 Zadoc Hook, and is he now present in this room?

Answer. I am acquainted with him, and he is now present.

3d question by same. Do you occupy any business relation to the estate of the late John J. Curtis? If aye, state what.

Answer. I am administrator of the estate of John J. Curtis, appointed by the county court of Culpepper County, at its November term, in 1865.

4th question by same. When did you first become acquainted with Mr. Hook, & where; and did he, as administrator of Fielding Curtis, ever pay you, as administrator of John J. Curtis, any money, and how much?

Answer. I became acquainted with him in this place about the 21st of February, 1866, I reckon, as administrator of Fielding Curtis; he paid

me, as administrator of John J. Curtis, twelve hundred & fifty ($1,250) dollars in a cheque, which was subsequently paid; I entered it to the credit of John J. Curtis' estate on the 23d February, 1866.

5th question by same. Did Mr. Hook exhibit to you at any time any statements, accounts, or settlements, showing the value or losses of the estate of Fielding Curtis?

Answer. I think not.

6th question by same. Did he say anything about what the
248 estate was worth, or of its losses; if aye, what did he say?

Answer. I have no recollection of his saying anything about what the estate was worth, or of its losses, except that the twelve hundred and fifty ($1,250) dollars was the full amount coming to the estate of John J. Curtis; I think he said that this amount he paid to the other three (3) children of Elijah Curtis each, John J. Curtis being a son of Elijah Curtis.

7th question by same. Did you give him a receipt for so much on account, or in full?

Answer. Mr. Hook had the receipt written when he came to my office & paid me the check; I think it was written in full, & I objected at the time to the phraseology, because I did not know myself, never having investigated the matter. He insisted on having it in that form, & I, being anxious to get money for John J. Curtis' estate, signed the receipt, or one similar to it; I think, but am not certain, that there was some little alteration made in the phraseology of the receipt by me or at my suggestion; my reason for signing the receipt, purporting to be in full, was, that I thought if, under the circumstances, it was all that was coming to John J. Curtis, it could do no harm, and if it was not, it could not prevent the estate of John J. Curtis from afterwards recovering what might be due.

249 8th question by same. State what was the condition in June, 1865, of the county of Culpepper, and of the people of the county generally; whether there were any courts organized in the county for the administration of justice at that time; whether the public mind was at that time in a state of tranquility or apprehension; and, if of apprehension, what was the character of that apprehension?

(The counsel for the defendant objects to this question as irrelevant.)

Answer. The county of Culpepper, in June, 1865, being a few months after the fall of Richmond, was in a desolate condition, having been occupied during nearly all the war by either one or the other of the armies. The fencing was generally destroyed, & for several miles on each side of the railroad, which runs through the county for 20 miles, the timber was nearly all destroyed, and a great many of the buildings. The people were generally poor; very few had any stock of any description, or very little; the farming utensils were generally destroyed, & I think only very few had any money of any consequence; some few persons had bought tobacco & cotton, & had deposited it in other parts of the country, which they afterwards sold for good prices. There
were no courts of justice organized in this county until Sep-
250 tember, 1865. The public mind was uneasy, on account of the condition of the country, fearing confiscation of property, repudiation of debts, and apprehensions of a war with France about Mexico.

9th question by same. Do you know what was the pecuniary condition of George E. Marshall & R. M. Crump in June, 1865; what property they had, and what liens there were upon it?

Answer. In June, 1865, Mr. Marshall owned between three & four hundred acres of land about 3 miles from this place; the home-tract, of

three hundred (300) acres, he held at thirty (30) dollars per acre; the rest of the land I do not know. Besides this, he had some personal property, the amount of which I do not know. The amount of liens was between eight and ten thousand dollars, of which I held about seven ($7,000) thousand dollars. I do not know of any real estate that Mr. Crump held at that time. He sold his farm during the war for about twenty-two hundred ($2,200) dollars, and received one thousand dollars in confederate money in the fall of 1862, & about the balance of the purchase-money there is now a controversy in court. I believe he had some little personal property.

Cross-examination:

1st question by James Barbour, counsel for defendant, Hook. In
251 addition to all the terrors & anxieties which you represent as prevailing in Culpepper in 1865, were there any apprehensions of comets, earthquakes, or other convulsions in nature?

Answer. None that I heard of in this county.

2d question by same. Did not the people, in spite of all this, go vigorously to work & make crops which sold for good prices?

Answer. They made corn crops; for the quantity of land cultivated, I think very little wheat had been sown the preceding fall.

3d question by same. Were there really any apprehensions of confiscation of the property of old women & children & old men, who had not been in the confederate service?

Answer. I do not know that there were, as to them.

4th question by same. How long have you been a practicing attorney & counsellor at law?

Answer. About twenty (20) years, including the war.

5th question by same. How long were you a bank officer?

Answer. About two (2) years.

6th question by same. In your interview with Mr. Hook, did he fail to give you fair & truthful answers to any enquiries which you addressed to him about this business?

Answer. He answered all my enquiries freely, but whether
252 truthfully or not I have not the means of knowing. What enquiries I made I do not now remember.

7th question by same. Do you not know that Mr. Hook, when he was here in 1865, before the courts were organized, & when there was & could be no administration upon the estate of John J. Curtis, had, at the request of the widow of John J. Curtis, paid $1,250 to Doctor J. W. Ashby, whom she had selected as administrator of her husband & guardian of her children, to be appointed as soon as the courts were organized?

Answer. I know nothing about it of my own knowledge, but Mrs. Curtis & Mr. Hook both told me so; and Mrs. Curtis also told me that Dr. Ashby had paid her only seventy-five ($75) dollars of this money, which she returned to Mr. Hook. Dr. Ashby is regarded as insolvent.

8th question by same. How long did you hold the $1,250 paid you; & did you pay the most of it to the creditors, or to the widow of John J. Curtis?

Answer. I paid Mr. James W. Green on the same day that I received it, representing himself and other creditors, $411 $\frac{39}{100}$; I paid him on the 31st May, 1866, $1,039; I paid C. Curtis, another creditor, in August, 1866, $267 $\frac{43}{100}$, and other creditors small amounts. I received other monies for the estate. On the 20th August, 1866, I paid to the widow, Mrs Curtis, $164 $\frac{65}{100}$, and in January, 1867, I closed the estate,

253 & paid to Mrs. Curtis the balance due her, $13\frac{91}{100}$, & to the guardian of the children $356\frac{92}{100}$. Further this deponent sayeth not.

F. M. LATHAM.

And the Exhibit No. 1, referred to in the depositions of Peter J. Norris and John J. Payne, is in the words and figures following, to wit:

Exhibit No. 1, *referred to in depositions of Norris & Payne.*

Whereas, Zadok Hook, of the county of Callaway, in the State of Missouri, became and is now the legal and acting administrator of the estate of Fielding Curtis, who departed this life in the county & State last aforesaid, on the 3rd day of February, A. D. 1861; and whereas the undersigned Susan Curtis, Mary Guinn, and Anne Payne, all of the county of Culpepper, in the State of Virginia, are surviving sisters of said deceased, and, as such, heirs-at-law and distributees of his estate; and whereas the precise amount of their respective distributive shares cannot now be ascertained, on account of the uncertainty of collecting many notes and evidences debt due said estate; and whereas the said Zadok Hook, administrator as aforesaid, has this day paid to the said heirs & distributees, Susan Curtis, Mary Guinn, and Anne Payne, each the sum of five thousand dollars, which said payments are twelve hundred dollars to each of said heirs & distributees over and above the amount of good and available assets now held by said administrator; and whereas the amount of available and undoubted assets in

254 said adm'r's hands, in money and notes, is the sum of thirty-eight hundred dollars, to each of the said heirs, Susan Curtis, Mary Guinn, and Anne Payne, now, therefore, in consideration of the premises, we, the said Susan Curtis, Mary Guinn, and Anne Payne, do hereby bind and obligate ourselves each to refund to the said Zadok Hook, administrator as aforesaid, such amount as he shall fail to collect of the assets of said estate, between the amount of thirty-eight hundred dollars, the sum ascertained to be due each of us, and the sum of five thousand dollars, the amount he has this day paid to each of us, and for which we have signed an acquittance and discharged to him, bearing even date herewith. It being understood that this obligation upon our part to refund shall not extend over a period of five years; after the expiration of that time this obligation shall cease & become void. Given under our hands and seals, this June 19th, A. D. 1865.

her
MARY + GUINN. [SEAL.]
mark.
her
ANNE + PAYNE. [SEAL.]
mark.
her
SUSAN + CURTIS. [SEAL.]
mark.

Teste:
PETER J. NORRIS.
JNO. J. PAYNE.
JNO. A. HOCKADAY.

[50 ct. U. S. rev. stamp.]

Deposition of Isaac W. Boulware.

Deposition of Isaac W. Boulware, taken before James W. Overton, notary public in and for the county of Callaway, in the State of Missouri, on the 11th day of October, A. D. 1869.

ISAAC W. BOULWARE, of lawful age, being produced as a witness for the complainants, and been duly cautioned and sworn, de-
255 poseth and saith:

Ques. by complainant. What is your age and place of residence?

Ans. I am forty years old; reside in the city of Fulton, Missouri, and am by profession an attorney at law.

Ques. Are you acquainted with defendant, Zadok Hook?

Ans. I am, and have been for a number of years past.

Ques. Have you had any conversation with defendant Hook in regard to the issue of the suit now pending in the United States circuit court, wherein Ann Payne and others are complainants, and Zadok Hook & others are defendants? If so, state when & where, and what was stated in said conversation.

Ans. I have; I had a conversation with Mr. Hook in the city of Fulton, a few days ago, in which he enquired of me what facts I expected to prove by the depositions to be taken here to-day. I told him the object of the taking of these depositions was to obtain proof in regard to the loss he claimed, in his answer in said suit, to have sustained on claims against Jno. M. Houston and Doctor Nathan Kouns; also the solvency of the makers of the notes & bonds inventoried by him, Hook, as administrator of the estate of Fielding Curtis, deceased. Mr. Hook told me that it was unnecessary to take depositions in regard to proving the solvency of the makers of said notes & bonds; that he had
256 never denied their solvency, and that he had collected said bonds and notes, with the exception that he had not collected the entire claim against the Woodsons, as stated in the inventory.

Cross-examined by defendant:

At the time of the conversation with Mr. Hook, referred to, he asked what I was going to do in the proof in regard to the Houston matter, and I told him I was going into a full investigation of it. This is all I remember now that took place between us at that time.

ISAAC W. BOULWARE.

Deposition of N. C. Kouns.

Deposition of Nathan C. Kouns, taken before James W. Overton, notary public in and for the county of Callaway, in the State of Missouri, on the 11th day of October, 1869.

NATHAN C. KOUNS, of lawful age, being produced as a witness for the complainants, and being duly cautioned and sworn, deposeth and saith:

That his age is thirty-five years, and his residence is in the city of Fulton, Missouri; that he is a son of Doctor Nathan Kouns, of said Callaway County, Missouri; that he knows of his personal knowledge that his father executed a promissory note to Zadok Hook, (one
257 of the defendants,) as administrator of the estate of Fielding Curtis, dec'd, for fifteen hundred dollars, dated January 25th,

1864, bearing ten per cent. compound interest from date, and also one other note for five hundred dollars, dated 18 March, 1864, & bearing ten per cent. compound interest, both of which notes were secured by a mortgage, with power of sale, dated 18th day March, 1864, which mortgage was filed in the recorder's office for said county of Callaway, on the 30th April, 1864, and recorded in mortgage book "A," pages 122, 123, & 124; said mortgage covered about 320 acres of land lying in the Missouri River bottom, and about eight lots in the city of Fulton, Missouri, which property was sold under the mortgage referred to, and brought between twenty-seven and twenty-eight hundred dollars—nearly $2,800 I think—and Zadok Hook, the defendant referred to, was the purchaser at said sale; that the following described notes, to wit: one one-hundred-dollar note, dated Dec'r 12th, 1864, bearing ten per cent. compound interest; and one one-hundred-dollar note, dated Dec'r 30th, 1864, bearing ten per cent. compound interest; and one one-hundred-dollar note, dated Dec'r 12th, 1864, bearing ten per cent. compound interest; and one due bill for thirty-five dollars, dated 20th April, 1866, were executed by his said father to said Zadok Hook, but not as administrator; that these last described notes, in the settlement
258 made between Kouns & Hook after said sale, were computed with the notes made payable to Hook as administrator of estate of F. Curtis, dec'd, and said settlement embraced all of the notes above described, and also the following items for taxes paid by said Hook on the property embraced in said mortgage, to wit: forty-nine and $\frac{04}{100}$ dollars, eight & $\frac{80}{100}$ dollars, five and $\frac{88}{100}$ dollars, and $\frac{50}{100}$ dollars, & twenty-five & $\frac{35}{100}$ dollars; that the whole amount of all of said debts, including notes and tax receipts, on the 1st day of October, 1866, including interest on all the items, according to a written statement made on that day by said Hook, was two thousand nine hundred and ninety-two & $\frac{52}{100}$ dollars.

Deponent further states that his attention has been called by complainants' counsel to a note in the inventory of Z. Hook, administrator of Fielding Curtis, dec'd, to wit: "One note on N. Kouns, C. H. Hardin, & N. C. Kouns & John R. Craighead, dated Oct. 11th, 1856, due one day after date, for three hundred and fifty dollars." "Ballance, interest on same, twelve and $\frac{53}{100}$ dollars." Deponent states that this was a good and solvent note when made, and that it continued so until settled; that Hardin & the estate of Jno. R. Craighead, dec'd, are both perfectly solvent to-day; that the deponent, in October, 1868, offered said Hook an advance of two hundred dollars on the town lots mentioned
259 in said mortgage more than Hook had paid for them, payment to be cash; that the mortgage hereto attached and marked Exhibit "A," is the original mortgage referred to in this testimony; that after the sale of said property aforesaid, he (deponent) offered said Hook to pay all the debts mentioned in this testimony, if he would reconvey the property; that deponent did not do anything to satisfy Hook of his ability to make the payment, nor did Hook ask him to do so; the talk about it ended in his (Hook) asking a bonus of two hundred dollars for sutch reconveyance.

NATHAN C. KOUNS.

The defendant, Zadok Hook, having made his appearance at one and a half of the clock in the afternoon, & stated that he had been unavoidably detained on his way from St. Louis, Mo., to Fulton, and not being present in the forenoon at the examination of Nathan C. Kouns until after the closing of the same, and the deposition of said Kouns

having been in the forenoon closed, certified to, and the witness discharged, the defendant, Hook, asks to introduce and cross-examine said witness, (who is now in court,) in regard to the matters by him stated in his examination-in-chief, to which the attorneys for complainants object to said cross-examination at this stage of the proceeding,
260 for the reasons that said witness had been examined in full, his examination reduced to writing, signed by the witness, & the same certified by the notary, & the witness discharged before application was made by defendant to cross-examine; whereupon the defendant, by his counsel, interposed his objection to the entire deposition of said Nathan C. Kouns, on the ground of the irrelevancy thereof.

The witness then being introduced, the following questions were asked, upon cross-examination, by defendant:

Question. What was the amount of the notes referred to in your deposition closed this morning, at the time of the sale of the land and lots therein referred to?

Answer. The sale occurred, I think, in October, 1868, and the aggregate of those notes & tax receipts would be about thirty-six hundred and twenty-five dollars. I have made no exact calculation of interest on the notes, &c.

Question. Did you state, in your examination-in-chief, that the 320 acres of land covered by the mortgage referred to was in the Missouri River bottom?

Ans. I did not. If such statement appears, my testimony was incorrectly written. I stated then, and state now, that the land is
261 in the county of Callaway, near the Missouri River. My impression is that there is as much as two hundred and twenty acres of the land in the river bottom; a portion of the bottom land is wet; there is a field of twenty-five or thirty acres in the bottom inclosed; I suppose there is about one-third of the bottom land that is too wet to farm without some drainage; I guess at this proportion from my knowledge of the land. There is no house on the place.

Ques. How long has the house in Fulton been standing?

Ans. The house is an old house, but I am unable to say how long since it was built; a part of it was built within my recollection—three of the lots in one parcel—where the stable is covered by a ravine, and are of little value except for the stable. Two others of them lie in and across "Town Creek," and are of small value; the three, or three and a half lots where the house is, I consider good property.

Ques. Did you in the year 1866 or 1867 request Mr. Hook to defer the sale of the property covered by that mortgage, until property should become more valuable?

Ans. I cannot tell whether I made the request or not; my father and I talked it over, and agreed that the sale had better be postponed for the reason assigned. I am satisfied that such a request was made either by me or my father, & the sale was postponed; about this
262 time Mr. Wm. H. Wilkerson became the owner of the debt, under a deed of trust, and Mr. Hook became security to him for the debt. I think that the sale of the property was left to Mr. Hook's direction.

Ques. At the time you proposed to purchase the town property, did you not offer to secure a payment by a mortgage on the property to Mr. Hook?

Ans. I did not; Hook told me that the money was given to Wilkerson, and that he wanted to pay it. I then proposed to get a credit for

him on the debt he owed Wilkerson to the amount of the value of the property. He said this would be cash to him, and I made the arrangement with Mr. Wilkerson for that purpose.

Ques. Why was not the arrangement gone into?

Ans. After I had made the arrangement with Wilkerson to pay for the town property, Mr. Hook said that he only meant the lots on which the house stood, & those enclosed with it, leaving out the stable lots and those across the creek; I then declined the trade in this way, because I thought the proposition was understood to be for the whole property. I was to give two hundred dollars advance on the price paid by Mr. Hook for the town property, which was not accepted by him; my contract with Wilkerson was this: I was to give him four
263 hundred dollars in cash at the next April term of the Callaway circuit court, and a mortgage or deed of trust on the property for the residue. The first payment of four hundred dollars was to be secured by notes of hand payable to me, which I was to assign to him.

Ques. Will you state how the property was sold?

Ans. It was sold in different parcels, but I cannot say whether more than one lot was sold at a time; the land was sold separately.

Ques. Do you recollect who bid on the property?

Ans. I cannot state; *Swon* Fergusou, I think, bid on the land; he is a large property-holder in this county, and owns lands adjoining the farm mentioned. I think he bid as much as two thousand dollars for the land; Mr. Hook bought all the property. Hook had no other way to make his debt except in the sale of this property. To all of which cross-examination of Nathan C. Kouns by defendant, complainants, by their attorneys, objected, on account of its irrelevancy, illegality, incompetency, and informality.

NATHAN C. KOUNS.

Exhibit "A," annexed to deposition of N. C. Kouns.

Exhibit "A," annexed and referred to in the foregoing deposition of Nathan C. Kouns.

Know all men by these presents that we, Nathan Kouns and Winnifred N. Kouns, his wife, for and in consideration of the sum of
264 five dollars, to us in hand paid by Zadock Hook, the receipt whereof is hereby acknowledged, as well also in consideration of the debts hereinafter mentioned, have this day, and do by these presents grant, bargain, sell, and convey to said Zadock Hook all our right, title, claim, interest, and estate in and to the following real estate situate, lying, and being in Callaway County, State of Missouri, to wit: lots No. 20, 23, and the north half of lot No. 24; also lot No. 127, 128, 74, 75, 76, & 78, in the town or city of Fulton, as will appear by said numbers on the original plat of said town or city, on file in the recorder's office of Callaway County, situate on —— street, the same including the residence and appurtenances where the said Nathan Kouns now resides, it being the intention by the above description hereby to convey all the real estate owned which we have any interest in the town or city of Fulton; also the following real estate situate in Callaway County, to wit: The southeast fractional quarter of section 31, in township 45, north of range 9 west, containing seventy-nine & $\frac{82}{100}$ acres; also survey number two thousand six hundred and thirty-four, (2,634,) in township 44 north, of the base line of rang e9 west, of the fifth principal meridian line, being the same land described in a patent which has

issued from the Executive of the United States to the legal representatives of Edward Mathews, senior, dated at Washington City, the
265 15th day of October, 1829, and recordered in the office of the Commissioner of the General Land Office at Washington City, in volumes 7, pages 160, 161, 162, 163, 164, 165, which will more fully appear by referring to said patent, the same being supposed to contain two hundred and forty acres; said land being also described in a certain deed of conveyance, of record in Callaway County, in Book B, folios 354, 355, 356, from J. B. Grant, adm'r of Robert Read, to Nathan Kouns, to have and to hold the real estate hereinbefore described and conveyed to him, the said Zadock Hook, his heirs and assigns forever. This conveyance to be void, however, upon the following express condition: Whereas Nathan Kouns has this day executed his two certain promissory notes to Zadock Hook, administrator of Fielding Curtiss, one for the sum of fifteen hundred dollars, dated Jan'y 25th, 1864, due on or before the 25th day of January, 1865, bearing ten per centum per annum compound interest, and his certain other promissory note for five hundred dollars, bearing even date herewith, the interest, to be annually compounded at the rates of ten per centum per annum, due and payable on or before the 25th day of Jan'y, 1865: Now, if the said Nathan Kouns shall well and truly pay said notes, with the interest accrued
266 and accruing thereon, according to the tenor and effect thereof, then this conveyance to be void; but if the said notes remain due and unpaid after their maturity, then the said Zadock Hook, his executors, adm'rs, or assigns, may proceed to sell the real estate herein conveyed, or any part thereof, at public vendue, for cash, at the court-house door, in the city of Fulton, Callaway County, Mo., by first giving six months' notice by four hand-bills posted in four public places in Callaway County, or by public advertisement in some newspaper published in Callaway County, of the times, terms, and place of sale, and the real estate to be sold, and, upon a sale thereof, shall receive and receipt for the purchase-money, and the same shall be first applied to the payment of the costs and expenses of this trust; and, secondly, to whatever may be due and unpaid on said notes, and the balance shall be paid over to said Nathan Kouns, his executors or assigns, and the said Hook, his, adm'r or assigns, shall, upon said sale, make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed for the property so sold; and it is further understood that said Hook shall pay all taxes now or hereafter to become due on said property at any time previous to a sale hereunder, and said sum so paid shall constitute a part and parcel of the expense of this trust, and shall be paid by him as such.

In witness whereof we have hereunto set our hands and seals
267 this 18th day of March, 1864.

NATHAN KOUNS. [SEAL.]
WINIFRED N. KOUNS. [SEAL.]

[2 50 U. S. rev. stamp.]

STATE OF MISSOURI,
County of Callaway, ss:

Be it remembered, that on this 18th day of March, 1864, appeared before me, the undersigned, Thomas B. Nesbit, clerk of the circuit court, in and for the county aforesaid, Nathan Kouns & Winnifred Kouns, personally known to me to be the persons whose names are subscribed to the within and foregoing deed as parties thereto, and acknowledged the same as their act and deed, for the uses and purposes therein mentioned. And she, s'd Winnifred Kouns, being by me first made ac-

quainted with the contents of said deed, on an examination separate and apart from her said husband, acknowledged and declared that she entered the same, and relinquishes her right, title, and interest in and to the land and tenements therein mentioned, freely and voluntarily, without compulsion or undue influence of her said husband. In testimony whereof I have hereunto set my hand, and affixed the seal of office at office, on this 18th day of March, in the year 1864.

[SEAL.] THOS. B. NESBIT, *Clerk.*

STATE OF MISSOURI,
County of Callaway:

268 I, Thos. B. Nesbit, clerk of the circuit court & ex-officio recorder, within & for said county, do certify that the foregoing mortgage was filed in my office for record on the 30th April, 1864, & the same is duly recorded in Mortgage Book A, pages 122, 123, & 124. Witness my hand & official seal hereto affixed the date above.

THOS. B. NESBIT, *Clk & R.*

And the agreement of the parties by counsel, filed in this cause April 7th, 1870, is in the words and figures following, to wit:

Agreement of parties by counsel.

It is agreed that the schedule to the answer of the defendants in reference to the debts spoken of therein in these words: This sum owing by Bryan, Benton & Bell, $4,000, refers to the notes of which copies are given above; that the sum of $4,000 was lent to Bryan, Benton & Bell, & Charles Babcock, in two sums of $2,000 each; Babcock becoming surety for Bryan, Benton & Bell, & Bryan, Benton & Bell becoming surety for Babcock, all of which was done in 1864. This agreement is made to be used at the hearing on the part of the plaintiffs in the case of Payne et al. vs. Hook & others, pending in the United States circuit court.

THOS. T. GANTT, P. D. GLOVER & SHEPLEY, *for Compl'nts.*

It is further admitted that Bryan, Benton & Bell have failed in business and stopped payment.

GLOVER & SHEPLEY, *for Pl'ffs.*

269 And the copies of said notes referred to in the above agreement of parties are in the words and figures following, to wit:

Copies of notes referred to in agreement of parties.

$2,000 00.] FULTON, MO., *Sept.* 12, 1864.

Six months after date we promise to pay Zadock Hook, or order, two thousand $\frac{00}{100}$ dollars for value received, to bear 10 per cent. interest from date until paid. If the interest is not annually paid, to become as principal, and bear same rate of interest, negotiable and payable without defalcation or discount.

CHAS. BABCOCK.
BRYAN, BENTON & BELL.

[U. S. S. $1 00.]

MAR. 29, 1865.—Received on within note, thro' Bryan, Bell & Co., six hundred and seventeen & $\frac{11}{100}$ dollars.

ZADOCK HOOK.

$666 67.] ST. LOUIS, MO., *July 1st*, 1868.

Twelve months after date, we, or either of us, promise to pay to Zadock Hook, or order, six hundred and sixty-six & $\frac{67}{100}$ dollars for value received, with ten per cent. per annum interest from date until paid. If the interest is not annually paid, to become principal, and bear the same rate of interest, negotiable and payable without discount or defalcation.

F. H. BENTON.
T. P. BELL.
BERNARD BRYAN.

$666 67.] ST. LOUIS, MO., *July 1st*, 1865.

270 Eighteen months after date, we, or either of us, promise to pay Zadock Hook, or order, six hundred and sixty-six and $\frac{67}{100}$ dollars for value received, to bear ten per cent. per annum interest from date until paid. If the interest is not annually paid, to become principal, and bear same rate of interest, negotiable and payable without discount or defalcation.

T. P. BELL.
F. H. BENTON.
BERNARD BRYAN.

[U. S. stamp, $0 35.]

$666 67.] ST. LOUIS, MO., *July 1st*, 1865.

Two years after date, we, or either of us, promise to pay Zadock Hook, or order, six hundred and sixty-six & $\frac{67}{100}$ dollars for value received, with interest at the rate of 10 per cent. per annum from date until paid. If the interest is not annually paid, to become principal, and bear the same rate of interest, negotiable and payable without discount or defalcation.

BERNARD BRYAN.
F. P. BELL.
F. H. BENTON.

[U. S. stamp, $0 35.]

$617\frac{11}{100}$.] ST. LOUIS, MO., *July 1st*, 1865.

Six months after date, we promise to pay Zadock Hook, or his order, six hundred seventeen dollars and eleven cents, with ten per cent. from 27 March last until paid, without discount or defalcation, for value received.

BRYAN, BELL & Co.

[U. S. stamp, $0 35.]

271 And the copy of the mortgage deed to John M. Houston, dated Ap'l 13, 1863, and filed in this cause April 7, 1870, is in the words and figures following, to wit:

Copy of mortgage deed by Huston & wife to Hook.

Know all men by these presents, that we, John M. Huston and Permelia Huston, the wife of the said John M., of the county of Callaway, in the state of Missouri, have this day, for and in consideration of the sum of twenty-three hundred dollars to the said John M. Huston in hand paid by Zadok Hook, of the county and State aforesaid, bargained and sold, and by these presents do bargain, grant, sell, and convey unto the said Zadok Hook the following described tracts or parcels of land, situate in the county of Callaway, in the State of Missouri, to wit:

The east half of the northeast quarter of section No. 10, township No. 48, forty-eight, range No. 11, eleven, & the undivided south half of the southwest quarter of section No. 11, eleven, in township 48, forty-eight, north, of range 11, eleven, west, containing one hundred and sixty acres, more or less; to have and to hold the premises hereby conveyed, with all the rights, privileges, and appurtenances thereunto belonging or in any wise appertaining, unto the said Zadok Hook, his heirs and assigns forever, upon this express condition: whereas the said John M. Huston has this day made, executed, and delivered to the said Zadok Hook his said promissory notes in words and figures following,
272 to wit: Fulton, Missouri, April, 1863. One day after date, I promise to pay Zadok Hook, or order, twenty-three hundred dollars, for value received, to bear ten per cent. interest from maturity until paid. If this interest is not annually paid, to become as principal, and bear same rate of interest, negotiable and payable without defalcation or discount.

JOHN M. HUSTON.

Now, if the said John M. Huston, his executor, administrator, shall pay the sum of money specified in said note and all the interest that may be due thereon, according to the tenor and effect of said note, then this conveyance shall be void; otherwise shall remain in full force and virtue in law, and the said Zadok Hook, or his executor or administrator, may proceed to sell the property hereinbefore described, or any part therof, at public vendue, to the highest bidder, at the court-house, in the county of Callaway, for cash in hand, first giving thirty days' public notice of the time, terms, and place of sale and the property to be sold, by advertisement in the Missouri Telegraph, or by ten written or printed advertisements put up in ten public places in said county of Callaway, and upon such sale and the payment of the purchase-money, shall execute and deliver a conveyance of the property so sold to the purchaser
273 thereof, and any statement of facts or recital, by the said Zadok Hook, in such conveyance in relation to the advertisement, sale, receipt of the purchase-money or execution of such conveyance, shall be received as prima facie evidence of the truth thereof, and the said Zadok Hook shall, with the sale aforesaid, pay first the expenses of this trust, and next whatever may be in arrear and unpaid on said note, whether of principal or interest, and the balance, if any, shall be paid over to the said John M. Huston or his legal representatives. In witness whereof we have hereto subscribed our names and affixed our seals, this 13th day of April, 1863.

JOHN M. HUSTON. [SEAL.]
PERMELIA HUSTON. [SEAL.]

STATE OF MISSOURI,
County of Callaway, ss:

Be it remembered that John M. Huston and Permelia, his wife, who are personally known to the undersigned, a justice within and for said county, to be the persons whose names are subscribed to the within and foregoing mortgage deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act & deed for the uses and purposes therein contained. And the said Permelia, being by me made acquainted with the contents of said deed, acknowledged, on an examination apart from said hus-

band, that she executed the same, and relinquishes her dower in
274 the real estate therein mentioned, freely and without compulsion or undue influence of her said husband.

Given under my hand this 13th day of April, 1863.

THOMAS B. MADDOX,
Justice of the Peace.

Filed and recorded April 13th, 1863, with stamp of $2 00.

THOMAS B. NESBIT, *Recorder.*

STATE OF MISSOURI,
County of Callaway, ss:

I, Joseph T. Bryan, clerk of the circuit & ex officio recorder within and for the county aforesaid, certify the foregoing to be a true and perfect copy of the record as fully as the same appears on Record Book "T," pages 611 & 612, on file in this office.

Witness my hand and official seal this 25th day of September, A. D. 1869.

[SEAL.]

JOS. T. BRYAN,
Clerk & ex officio Recorder.

[5-c. U. S. stamp.]

Deposition of Zadok Hook, taken at Fulton, Dec. 20, '69.

Deposition of Zadok Hook, one of said defendants, taken before James W. Overton, notary public, at Fulton, Missouri, on the 20th, 21st, & 22d December, 1869.

ZADOK HOOK, being produced as a witness for the defendants, and being duly cautioned and sworn, deposeth and saith that—

I am one of the defendants, & am a resident of Fulton, Callaway County, Missouri, and have been a resident of said county for forty-one years; was public administrator of Callaway County,
275 Missouri, from September, 1857, to November, 1868. I took charge of the estate of Fielding Curtis, dec'd, by order of the Callaway County court, in February, 1861. Fielding Curtis died at the house of W'm J. Hudson, in Callaway County, about the 3d day of February, 1861. W'm Carrington and Joseph Boyd, two householders and substancial citizens of Callaway County, living in the vicinity of the last abode of Fielding Curtis, dec'd, were appointed as witnesses to assist in making an inventory of the estate of said Fielding Curtis. In the month of Feb'y, 1861, I, Boyd, and Carrington visited the residence of William J. Hudson, in Callaway County, for the purpose of making an inventory of the estate. Hudson, at whose house Curtis died, was in possession of all his books, moneys, and papers, so far as I knew. I told Mr. Hudson our business, and requested him to hand over to me all moneys, books, papers, and evidences of debt, and all property of whatever character which he had in his possession & belonging to the estate of Fielding Curtis, deceased. He then produced a small lot of gold coin, amounting to one hundred and eleven dollars, a lot of silver coin, amounting to nine and $\frac{45}{100}$ dollars, and a lot of Missouri bank paper, amounting to six hundred dollars. He then produced and counted to us the promissory notes of said estate, which were numbered and carefully named. Mr. Hudson kept a list of the notes handed
276 over to us, and we also kept a list of them. Mr. Boyd had in his possession that list. I then took a schedule of his chattels, which consisted of a lot of clothing for his own wear, and some other little

things of trifling value. We then left Mr. Hudson's and went to the residence of Mr. W'm Carrington, where we made the inventory. In making the inventory, Mr. Boyd would hand out one note at a time to Mr. Carrington and myself, as it occurred in his list; Carrington and myself calculated the interest, showed the figures to Boyd, and, when found correct, I would place the principal of the note in one column in inventory, and the interest in another column, and in this way we proceeded until every note belonging to the estate of Fielding Curtis, dec'd, that I ever saw or heard of, was inventoried. The negroes were five in number, to wit: Ralph, Anderson, Marine, Mary, and Elizabeth. The statement in the petition of complainants that I failed to inventory an account for more than fifteen thousand dollars of money, gold, and silver coin, bonds, notes, and obligations calling for money, the property of said Fielding Curtis, dec'd, is wholly untrue and without foundation. The inventory shows the true amount of the estate. I never loaned a dollar of my own money, nor money intrusted to my care and management, for a higher rate of interest than ten per centum per an[n]um
277 in all my transactions through life, but I have often times loaned at six per centum per annum. My settlements, refer[r]ed to in the "bill" of the complainants as false and fraudulent, in May, 1862, May, 1863, May, 1864, and May, 1865, were made on as fair terms as I knew how to make them, after a full consultation with the several county courts before whom they were made. Mrs. Ann Burnam and Mrs. Virginia Sappington were the only heirs of Fielding Curtis, dec'd, living in Missouri, & known to me at that time. I paid to David M. Burnam, the husband of Ann, his wife, in the notes of Fielding Curtis, as soon as I could get him to receive them, on or about the 11th day of November, 1861, the sum of four thousand three hundred and forty-one and $\frac{65}{100}$ dollars, and took his refunding bond. Mr. W'm J. Sappington, husband of Virginia, in consequence of the unsettled condition of the country at the time, and the fact that I required of him a refunding bond, was slow to receive his wife's interest in the estate. The consequence was, I paid him at different times, partly in the notes of the estate and partly in cash, as I could prevail on him to accept it. When I paid Sappington & Burnam, the only two heirs I had access to at the time, my object was to pay off all the heirs as soon as possible, but the war interrupted communication between me and the other heirs in Virginia, so
278 that I could not pay them any part of their distributive shares. I therefore concluded, when I made my second annual settlement in May, 1863, as times were unsettled and uncertain, that it would be best for me to get a credit for such payments as I had made to Burnam & Sappington, and I filed their receipts in my settlement, and charged six per cent. on those payment from the time they were made to the time of said settlement, which was in accordance with the practice of administrators in the Callaway County court. My commissions were charged in accordance with the laws of Missouri, as will be seen from my several settlements. Shortly after I took charge of the estate of Fielding Curtis, dec'd, in Feb'y, 1861, and made an inventory thereof, I wrote a letter to Abraham Curtis, the oldest male member of the family, and a brother of Fielding Curtis, deceased, and directed it to him at Culpepper Court-House, Virginia, informing him of the death of his brother, and that I had taken charge of the estate as public administrator of Callaway County, Missouri, and that the estate inventoried over sixty-six thousand dollars, all in the bonds and notes of individuals, except about seven hundred and twenty dollars in gold and silver coins & Missouri paper; that although there were no

liens on real estate to secure any of it, yet I believed it to be
279 about all good, & that besides this there were five slaves. This letter I know he received, for he answered it in April, 1861, stating that he would furnish me with the names of the parties interested in his brother's estate, either by letter or by an agent. This information of the death of Fielding, and of the value of his estate, was communicated to his three sisters and others of the family by Abraham Curtis, for they so informed me when I went there in 1865. They said they had received that information; they all knew of the letter, for they spoke of it. Mr. Jno. J. Payne, son of Ann Payne, one of the complainants, mentioned to me in the presence of his mother, Mrs. Susan Curtis, Mrs. Mary Guyn, Mr. Peter J. Norris, and John A. Hockaday, before any agreement or compromise was settled or paid, that I had written such a letter to his uncle Abraham. I told him in the presence of the parties mentioned that I had written the letter referred to, and that letter was true at the time it was written, and that I would abide by it. After the death of Abraham Curtis, which occurred in 1866, and since suit has been instituted against me, I called on the administrator of Abraham Curtis, dec'd, (Mr. Field, I believe,) for the letter. He said when he ad-
ministered he only took charge of such papers as were valuable
280 in his administration, and left the ballance with Abraham's old papers at Mrs. Mary Guyn's, or at the place where Abraham died. I then called on Peter J. Norris, as he was Mrs. Guyn's favorite in the transaction of business, and who looked into her papers more than any one else that I knew of, and requested him to procure that letter for me, but he failed to get it for me. Do not know whether he tried to get it or not. Witness here produces a letter, signed Abraham Curtis, and dated at Culpepper Court-House, April 19th, 1861, and addressed to "Zadok Hook; also an envelope, post-stamped Culpepper, and addressed to Zadok Hook, esq., Fulton, Callaway County, Mo.," which are hereto attached, and marked Exhibits One and Two of this deposition, which the witness states is the same letter before spoken of. The witness further says that my reason for going to Virginia in June, 1865, was that I had sustained heavy losses in managing the estate, and that unless I could bring about some kind of a compromise with the heirs, by which I could be relieved from a rigid settlement of the estate, as the courts might require, I would be financially ruined. This reason, therefore, prompted me to make an effort to save myself from such a condition. When I arrived at Culpepper Court-House, I made inquiry
for Abraham Curtis, and was told he resided in Orange County.
281 I then inquired for his sisters, & was told that two of them resided within a few miles of Culpepper Court-House. I hired a horse, and rode out to see them. I saw Mrs. Payne and Mrs. Guyn, both of them at their homes. I informed them that I was the administrator of their deceased brother Fielding's estate, had lost considerable portion of it during the war, and should probably lose more in the end; that everything at that time was in an unsettled and doubtful condition, and that I had come on there to make some kind of compromise or agreement, so as to save myself from these losses, & do as well as I could for them. They expressed a willingness to do so. I then told them to get together their sons and sons-in-laws, and those on whom they relied on in matters of business, as well as their other sister, Susan Curtis, who resided about fifteen miles away, and have a general consultation as to what course they would pursue. I told them it was a matter of great interest both to them and myself, (Mr. Hockaday was not with me at this time;) that I desired them to deliberate well before

acting, and to consult those in whom they had confidence about it. They sent to Madison Court-House for Jno. J. Payne, a son of Ann Payne, and Mrs. Gwyn selected Peter J. Norris, her son-in-law, who resided at Culpepper Court-House, for their advisors. I told Mrs.
282 Payne & Mrs. Gwyn they had better have their other sons and sons-in-law, and they said these two were sufficient to transact the business for them. They also sent for Mrs. Susan Curtis. Mr. Hockaday and Miss Payne went after Mrs. Susan Curtis; she came and received the same information, or about the same that the other two had received, and left their matters with Peter J. Norris & Jno. J. Payne, remarking that she would be satisfied with whatever they did. I was in Culpepper County about eight or ten days. Don't remember exactly. All that time I was with one or another of the heirs, or those related to them, and the subject of the compromise was spoken of very frequently. When Fielding Curtis died he left three living sisters and one brother, & the descendants of four brothers and sisters who had died before him, making all together eight original heirs. At this time I was dealing only with three living sisters, Ann Payne, Mary Gwyn, & Susan Curtis, by their advisors or agents, P. J. Norris and Jno. J. Payne. Payne spoke of the propriety of going or sending some one to Missouri to look into the estate. I told him that they could use their pleasure about that; that if they went there and examined my settlements, they would find that in my first settlement I had charged myself with
283 the full inventory and sale bill, and that in all my subsequent settlements with the Callaway County court I had received no credits except for payments of debts and expenses, and also for amounts paid Burnam & Sappington as heirs; that all the ballance stood on the record against me; bad paper and lost debts are brought up only on final settlements in our courts. Payne & Morris then asked me what I could pay each full legatee in the way of a settlement. I told them I could pay thirty-eight hundred dollars each to those three; they refused to accept it, after first consulting the old ladies. They said they would be satisfied with four thousand dollars each. I refused to give them that amount, and told them I was only dealing with three of the heirs; that the others might not negotiate with me, but demand a strict settlement & a rigid complyance with the law. Mr. Norris then said, (after again consulting with the old ladies,) if I would pay them five thousand dollars each, they would give a refunding bond for twelve hundred dollars each, and convey to me all their interests in the estate, so that I could manage and control it as best I liked. I told him and Mr. Payne that if there was a probability that the other heirs would enter into a similar arrangement, I would accede to their proposition, telling them at the same time that if I had
284 the full management, as owner of the outstanding debts, by indulging some of them & extending time of payment, I could make the money out of them, when, if they were forced by legal process to pay immediately, the debts might be partially or wholely lost. They said they believed that all the legatees would enter into a like arrangement with me. I told them I had lost in the management of the estate a very considerable amount of it that was irrecoverable; that during the war I was at a loss to know what to do with the money in my hands; that the courts had left it to my controll and management, as they were unwilling to make orders to loan out money during those doubtful times; that I had expected to pay it out when the war closed, but had no idea when that would be; that, in addition to seven or eight thousand dollars yet in the hands of the original debtors, I had loaned

out, at different times, the money of the estate; that there were then upwards of twenty thousand dollars of these debts uncollected—I mean those so loaned out. They insisted that I should pay them the five thousand dollars, and they would give me their refunding bond, and transfer all their right, title, and interest in the estate to me. I accepted their proposition, and took their joint transfer, which is
285 made an exhibit in Mr. Jno. A. Hockaday's deposition in this cause, and paid them fifteen thousand dollars, and also took their refunding bond. The answer to the thirty-fifth question of Mrs. Susan Curtis, in her deposition taken in Virginia, is, that I (Zadok Hook) said if the Yankees got my business in hand, we (meaning the heirs) would never get anything. The answer is correct. I did say that we were about to have a new constitution in Missouri; that it had been framed & very recently submitted to a vote of the people for adoption or rejection; that if it was adopted, another public administrator might be appointed to fill my place; and if so, he might make rigid exactions in handing over the estate of Fielding Curtis, deceased, to him; and lest that should take place, I preferred compromising the matter with the heirs themselves. She remarked herself: "Yes; and if the Yankees get hold of our estate, we'll never get anything." She used the term "Yankee" herself, as was common at that time with all Virginians I met. It was a term not commonly used in Missouri, at least in Callaway County. When I had occasion to speak of the northern people, as distinguished from the southern, I generally used the term "Union men" or "federals." George E. Marshall, a son-in-law of Mrs.
286 Mary Gwyn, stated in his deposition that Peter J. Norris asked him in my presence at Mrs. Gwyn's, in July, 1869, if he (Marshall) had not heard that Hook had given him (Norris) five hundred dollars, & if it had not been talked about among the heirs; and Norris stated that Hook was now present, and he (Marshall) could ask him whether it was true or false; and that Hook answered that he had given Mr. Norris one hundred dollars, and Mr. Jno. J. Payne a like sum. This statement of Marshall in his deposition is not true. I did not answer in that way, but I answered that I had handed Mr. Norris one hundred dollars at Baltimore in the latter part of June, 1865, to pay his expences and the expences of Mr. Jno. J. Payne in traveling around to see the various parties interested in the estate of Fielding Curtis, deceased, who had not yet entered into the arrangement. That is the statement I made. I gave Norris the one hundred dollars, supposing it to be to defray the expences of both of them; whether Mr. Norris gave Mr. Payne any of the money I do not know. I know it was a much less sum than I should have expended in traveling around in three or four counties, to see all the parties that they had to see. I did not solicit Payne and Norris to do the business for me; the proposition came from them. They were anxious that their relations should have their money.
287 I spoke of the matter of seeing the other legatees, and told Payne & Norris that it was useless for me to see them before returning home, as I could do nothing without money, and I had very little of that with me. They then proposed to see the parties, and if they, the other parties, would enter into an arrangement similar to the one made with the other three, they, Norris & Payne, would let me know, and I might return and consumate the arrangement, which was done. The hundred dollars, above referred to as having been given to Mr. Norris, is the only sum of money I ever gave to him or to Mr. Payne for any purpose or on any account, except the money paid to them for the heirs. I never agreed to give to them, or either of them,

acting, and to consult those in whom they had confidence about it. They sent to Madison Court-House for Jno. J. Payne, a son of Ann Payne, and Mrs. Gwyn selected Peter J. Norris, her son-in-law, who resided at Culpepper Court-House, for their advisors. I told Mrs.
282 Payne & Mrs. Gwyn they had better have their other sons and sons-in-law, and they said these two were sufficient to transact the business for them. They also sent for Mrs. Susan Curtis. Mr. Hockaday and Miss Payne went after Mrs. Susan Curtis; she came and received the same information, or about the same that the other two had received, and left their matters with Peter J. Norris & Jno. J. Payne, remarking that she would be satisfied with whatever they did. I was in Culpepper County about eight or ten days. Don't remember exactly. All that time I was with one or another of the heirs, or those related to them, and the subject of the compromise was spoken of very frequently. When Fielding Curtis died he left three living sisters and one brother, & the descendants of four brothers and sisters who had died before him, making all together eight original heirs. At this time I was dealing only with three living sisters, Ann Payne, Mary Gwyn, & Susan Curtis, by their advisors or agents, P. J. Norris and Jno. J. Payne. Payne spoke of the propriety of going or sending some one to Missouri to look into the estate. I told him that they could use their pleasure about that; that if they went there and examined my settlements, they would find that in my first settlement I had charged myself with
283 the full inventory and sale bill, and that in all my subsequent settlements with the Callaway County court I had received no credits except for payments of debts and expenses, and also for amounts paid Burnam & Sappington as heirs; that all the ballance stood on the record against me; bad paper and lost debts are brought up only on final settlements in our courts. Payne & Morris then asked me what I could pay each full legatee in the way of a settlement. I told them I could pay thirty-eight hundred dollars each to those three; they refused to accept it, after first consulting the old ladies. They said they would be satisfied with four thousand dollars each. I refused to give them that amount, and told them I was only dealing with three of the heirs; that the others might not negotiate with me, but demand a strict settlement & a rigid complyance with the law. Mr. Norris then said, (after again consulting with the old ladies,) if I would pay them five thousand dollars each, they would give a refunding bond for twelve hundred dollars each, and convey to me all their interests in the estate, so that I could manage and control it as best I liked. I told him and Mr. Payne that if there was a probability that the other heirs would enter into a similar arrangement, I would accede to their proposition, telling them at the same time that if I had
284 the full management, as owner of the outstanding debts, by indulging some of them & extending time of payment, I could make the money out of them, when, if they were forced by legal process to pay immediately, the debts might be partially or wholely lost. They said they believed that all the legatees would enter into a like arrangement with me. I told them I had lost in the management of the estate a very considerable amount of it that was irrecoverable; that during the war I was at a loss to know what to do with the money in my hands; that the courts had left it to my controll and management, as they were unwilling to make orders to loan out money during those doubtful times; that I had expected to pay it out when the war closed, but had no idea when that would be; that, in addition to seven or eight thousand dollars yet in the hands of the original debtors, I had loaned

out, at different times, the money of the estate; that there were then upwards of twenty thousand dollars of these debts uncollected—I mean those so loaned out. They insisted that I should pay them the five thousand dollars, and they would give me their refunding bond, and transfer all their right, title, and interest in the estate to me. I accepted their proposition, and took their joint transfer, which is
285 made an exhibit in Mr. Jno. A. Hockaday's deposition in this cause, and paid them fifteen thousand dollars, and also took their refunding bond. The answer to the thirty-fifth question of Mrs. Susan Curtis, in her deposition taken in Virginia, is, that I (Zadok Hook) said if the Yankees got my business in hand, we (meaning the heirs) would never get anything. The answer is correct. I did say that we were about to have a new constitution in Missouri; that it had been framed & very recently submitted to a vote of the people for adoption or rejection; that if it was adopted, another public administrator might be appointed to fill my place; and if so, he might make rigid exactions in handing over the estate of Fielding Curtis, deceased, to him; and lest that should take place, I preferred compromising the matter with the heirs themselves. She remarked herself: "Yes; and if the Yankees get hold of our estate, we'll never get anything." She used the term "Yankee" herself, as was common at that time with all Virginians I met. It was a term not commonly used in Missouri, at least in Callaway County. When I had occasion to speak of the northern people, as distinguished from the southern, I generally used the term "Union men" or "federals." George E. Marshall, a son-in-law of Mrs.
286 Mary Gwyn, stated in his deposition that Peter J. Norris asked him in my presence at Mrs. Gwyn's, in July, 1869, if he (Marshall) had not heard that Hook had given him (Norris) five hundred dollars, & if it had not been talked about among the heirs; and Norris stated that Hook was now present, and he (Marshall) could ask him whether it was true or false; and that Hook answered that he had given Mr. Norris one hundred dollars, and Mr. Jno. J. Payne a like sum. This statement of Marshall in his deposition is not true. I did not answer in that way, but I answered that I had handed Mr. Norris one hundred dollars at Baltimore in the latter part of June, 1865, to pay his expences and the expences of Mr. Jno. J. Payne in traveling around to see the various parties interested in the estate of Fielding Curtis, deceased, who had not yet entered into the arraugement. That is the statement I made. I gave Norris the one hundred dollars, supposing it to be to defray the expences of both of them; whether Mr. Norris gave Mr. Payne any of the money I do not know. I know it was a much less sum than I should have expended in traveling around in three or four counties, to see all the parties that they had to see. I did not solicit Payne and Norris to do the business for me; the proposition came from them. They were anxious that their relations should have their money.
287 I spoke of the matter of seeing the other legatees, and told Payne & Norris that it was useless for me to see them before returning home, as I could do nothing without money, and I had very little of that with me. They then proposed to see the parties, and if they, the other parties, would enter into an arrangement similar to the one made with the other three, they, Norris & Payne, would let me know, and I might return and consumate the arrangement, which was done. The hundred dollars, above referred to as having been given to Mr. Norris, is the only sum of money I ever gave to him or to Mr. Payne for any purpose or on any account, except the money paid to them for the heirs. I never agreed to give to them, or either of them,

nor to any other person, any other sum of money to procure a compromise or settlement. I purchased gold coin at different times during the war to the amount of eleven thousand eight hundred and forty dollars, solely for the benefit of the estate and not for speculation, at an average premium of ninety-seven cents to the dollar, with Missouri paper and "United States Treasury notes," making the amount expended twenty-three thousand three hundred and twenty-four and $\frac{80}{100}$ dollars. This gold was retained by me until the 15th day of May, 1865, when I ordered Allen, Copp & Nesbitt, bankers of Saint Louis, with
288 whom it was deposited, to sell it. They sold it on the 15th day of May, 1865, at twenty-eight cents premium for United States Treasury notes. The sale produced fifteen thousand one hundred and forty and $\frac{05}{100}$ dollars, a clear loss of eight thousand one hundred and eighty-four and $\frac{75}{100}$ dollars. I had sold in Febr'y, 1865, through the same house, a lot of small gold and silver amounting to sixteen hundred and fifty-nine & $\frac{88}{100}$ dollars, at a premium of ninety-eight cents on the dollar. This last was also purchased with funds of the estate, and was sold for one cent on the dollar more than it cost. These sales were the only ones made by me or for me of the funds of the Curtis estate. I did not make a business of trading in gold. I bought it once and sold it once; both these sums of coin were special deposits made with Mess. Allen, Copp & Nesbitt, previous to their respective sales. The witness here produces two letters from Mess. Allen, Copp & Nesbitt, showing the aggregate amount of sales of coin, which are referred to by him to refresh his memory on the subject, and are hereto attached and marked exhibits number three and four of this deposition. Both from Allen, Copp & Nesbitt, bankers, Saint Louis, Mo., & addressed to witness. Witness continues and says: The interest on twenty-three thousand three hundred and twenty-four & $\frac{80}{100}$ dollars, at six per
289 cent. for one year and a half, which is as near the times on an average as I can come, amounts to two thousand and ninety-nine and $\frac{22}{100}$ dollars. I loaned Bryan, Benton & Bell, of Saint Louis, and Chas. Babcock, of the funds of Fielding Curtis' estate, on the 12th day of September, 1864, four thousand dollars, which they have never paid, and they are given up as insolvent. They were well spoken of at the time they borrowed the money as a good firm and honorable gentlemen. The loss on these debts, up to 19th June, 1865, is forty three hundred and seven and $\frac{75}{100}$ dollars. I loaned Jno. M. Huston, on the 13th day of April, 1863, twenty-three hundred dollars of the funds of the Curtis estate, at which time he was regarded as one of our best men, upon a mortgage of real estate, with interest at ten per cent. On the 20th day of April I sold the mortgaged property at public auction to the highest bidder, and it realized sixteen hundred and one dollars, making a loss of nine hundred and ninety-eight and $\frac{80}{100}$ dollars, up to the 19th day of June, 1865. I loaned Dr. Nathan Kouns, of the funds of the Curtis estate, a sum of money (including about four hundred dollars, for which Curtis held his note) amounting to twenty-nine hundred and ninety-two dollars & eighty-two cents, on the 1st day of October, 1866, and took a mortgage on all his real estate known to me to secure it. On
290 the first day of October, 1866, Dr. N. Kouns executed his note to W'm H. Wilkerson for the sum of twenty-nine hundred and ninety-two and $\frac{82}{100}$ dollars, and gave said Wilkerson a mortgage on the same property, but Wilkerson would not make this arrangement unless I would go Kouns' security on the note, which I did. I owed the money to Wilkerson, he having loaned it to me; this induced me to sign the note as Kouns' security. I would not have done so had I not been

anxious to secure the money due from Kouns to the Curtis estate. On the 18th day of November, 1867, Wilkerson sold the property so mortgaged at public auction, and I bought the property, which did not bring the amount of the debt by six hundred & thirty-eight and $\frac{73}{100}$ dollars, which amount I immediately paid over to Wilkerson in cash. I should not have bought the property had I not been security on the note, and I may have to lose more in the sale of the land, a part of which I still own.

(Adjourned.)

Pursuant to adjournment, Mr. Zadok Hook, in continuation of his deposition, states as follows:

On the Woodson notes there was a loss of thirteen hundred and seventy dollars. These notes were given by Woodson to Fielding Curtis, dec'd, except one or two small notes which he gave to me as adm'r of the estate of Curtis, for interest. One of the notes was executed to *to*
291 Curtis by Geo. Woodson, with Warren Woodson as security. Warren Woodson made an assignment of his property, and paid a part on all the notes. Geo. Woodson was notoriously insolvent. I loaned John West about four thousand dollars in the years 1863 & 1864; don't remember the time of the years; and I also held a note on him, which he executed to Fielding Curtis, dec'd, which amounted, at the time the inventory of the estate was made, to one thousand and eighty-seven & $\frac{70}{100}$ dollars. In November, 1865, after I had purchased the interests of the Curtis heirs, I bought West's farm, at & for the sum of five thousand dollars. I had an old debt of my own against him, for some four or five hundred dollars. After purchasing his farm, West & I had a settlement immediately, and he fell in my debt about twenty-two hundred dollars, which he was unable to pay. I should not have purchased his farm had I not heard him offer to place it in the hands of agents, Hiram Cornell, or Henry Thomas, or both of them, for sale. I was passing at the time by them while talking on the street, and happened to hear Mr. West tell them that he must have five thousand dollars for his farm. I called him to one side, and asked him if he was offering his farm for sale, & if so, at what price. He said that he was then about placing it in the hands of agents to sell, and had instructed them not to sell it
292 for less than five thousand dollars. I asked him if that was his lowest price, & he said it was. I told him then that he could save an agent's commission; that I would take it *it* at five thousand dollars, when he said I could have it. After hearing his remark to the agents, as before related, & until I made the purchase, I was a good deal excited, for I did not know but that a plan was being laid to cut me out of my entire debt. Having lost all of his slaves, he had but very little other property than his farm left. The loss on the Cary L. Turner debt (which was an original note executed to Fielding Curtis, dec'd, with W'm Hook as security) was one hundred and seventy-five dollars. This note, as inventoried, was, with the interest added, one hundred and forty-five & $\frac{75}{100}$. There is a judgment in the Boone County circuit court against Jno. L. Chrisman for the amount of accrued interest on a note originally executed by him to Fielding Curtis, dec'd, which judgment has not been paid; the execution issued thereon having been returned, I believe, in 1864, not satisfied. My expences on two trips to Virginia amounted to as much as three hundred dollars; my expenses on various trips to Saint Louis, in taking care of the funds of the estate, amounted to as much as five hundred dollars; I place my commission, not yet deducted, at twenty-five hundred dollars; I put down the
293 internal revenue tax, not yet deducted from the estate, at one

thousand dollars. I loaned, of the funds of the estate, to W'm Hook a sum of money; I do not remember when, nor exactly the amount; took a mortgage or deed of trust to secure it, last spring or latter part of the winter. I sold the property mortgage—no, I am mistaken; I advertised it, but did not sell it, but agreed to take the property from W'm Hook at the sum of four thousand dollars. The debt, at the time I took the property, amounted to about four thousand dollars. The property I consider I paid a thousand dollars more for than it was worth. I have not obtained possession of it as yet. There was a contest about the right of possession. His wife contended she had not relinquished her dower in the *the* deed of trust. She, however, joined with her husband in the deed, and relinquished her dower, when I agreed to take the property at four thousand dollars.

The witness here produces exhibit number five of this deposition, showing various payments made by him on account of the Curtis estate, which is hereto annexed, & is as follows, to wit:

To King, collector, for taxes	$600	00
" Sappington & wife, distrib. share	610	00
" A. H. Martin, collector 4th dis. Mo., for income tax	163	28
" J. H. Waugh, receipt for money on fee-bills rec't	32	15
To Ja's R. Shields, rec't, dated May 23, '65, for professional services in various causes in court for the Curtis estate	350	00
	$1,755	43

294

about which various amounts witness states as follows:

I paid these various amounts in cash, as stated in said receipts. I paid to the Curtis heirs, altogether, forty-four thousand four hundred and two and $\frac{68}{100}$ dollars. Witness here exhibits a paper showing amount paid to the heirs of the Curtis estate, the expenses attending the administration of said estate, with statement of losses on account of said estate, the total amount of which payments, expenses, losses, &c., is seventy-five thousand and ninety-nine and $\frac{02}{100}$ dollars, which is hereto attached and marked exhibit six of this deposition. Witness further deposes and says: I had to raise the sum of ten thousand four hundred dollars to carry out my settlement with the Curtis heirs.

By Mr. Hayden: How did you raise this money?

(Mess. Glover & Boulware, counsel for the plaintiffs, object to the question as incompetent & irrelevant.)

Ans. I borrowed four thousand dollars from Joseph Flood, administrator of Cha's Baynham's estate; two thousand five hundred dollars from W'm H. Wilkerson, guardian for Baynham's heirs; two thousand five hundred dollars from Henry C. Haydon, and one thousand
295 dollars from Jno. A. Hockaday, all of which bore interest at the rate of ten per cent.

Q. by Mr. Hayden: Is the money you borrowed all paid?

(Mess. Glover & Boulware object for same reasons as above.)

Ans. I owe upwards of five thousand dollars of that money yet.

Q. by Mr. Hayden. What has been your profit, if any, on the contract or compromise with the Curtis heirs?

Ans. I do not know that I have made any profit; that depends altogether upon how I dispose of the real estate which has fallen into my hands by reason of the Curtis estate. If that should be sold at good prices hereafter, I shall probably make a small profit; but if I should

be reduced to the necesity of having it sold at public auction I think I should be loser. It is impossible for me to tell at this time.

Q. by Mr. Hayden. What was the conversation which passed between yourself & J. W. Boulware, at the time stated in his deposition?

Ans. I do not remember whether I rec'd Mr. Boulware's deposition or not. Mr. Boulware asked me what debts, originally due Fielding Curtis, dec'd, had been lost; if the Woodson debt was not about all. I told him at that time, without due reflection, that I thought it was, but
296 afterwards, on reflection, I remembered some others.

Cross-examined by plaintiffs' counsel:

Q. All day yesterday, & until within the last half hour of to-day, you have been reading from a manuscript your testimony. Who prepared that manuscript?

Ans. I did.

Q. Did you show it to anybody?

Ans. I showed a portion of it to Mr. Hayden.

Q. For what purpose did you show it to Mr. Hayden?

Ans. To ascertain whether there was anything improper in it or not.

Q. Did you show it to any one else?

Ans. No, sir.

Q. After showing it to Mr. Hayden, was any modification made in it?

Ans. Not at all, not the slightest.

Q. Did any one give you any suggestion how to draw it up?

A. I am a pretty good writer myself; no one gave me any suggestion how to draw it up.

Q. Did any one advise you to prepare such a paper?

Ans. No. Mr. Hayden said I should remember all the points, and not omit anything; that it was a case of considerable magnitude; one that I should consider well before I testified, or language
297 to that effect.

Q. When did you show the paper to Mr. Hayden?

Ans. Don't remember. I didn't show him one-half of it. I think it was Saturday last.

Q. Before that time did you ever show him any memorandum of your testimony?

Ans. No; only showed him a portion of it once.

Q. You took refunding bonds from Burnam & Sappington?

Ans. I took only the refunding bond of D. M. Burnam, & not of Sappington.

Q. Will you produce and file with your deposition that refunding bond or a copy of it.

(Mr. Hayden here remarks that he has a right to instruct the witness, and tells him that that refunding bond has nothing to do with the case.)

Ans. I will.

(Whereupon the witness produces the original refunding bond, and Mr. Glover, counsel for plaintiffs, consents that the witness may furnish a copy thereof to be used as of equal validity with the original, which is hereto attached & marked exhibit seven of this deposition.)

Q. How much of the assetts of the estate of Fielding Curtis, dec'd, did you collect during the first year of your administration?

Ans. I do not remember. I think about twenty-five thousand dollars.

298 Q. How much did you collect in the second year of your administration?

Ans. I can't tell; it would be guess-work at this time.

Q. How much in the third year?

Ans. I don't remember that.

Q. How much in the fourth year?

Ans. I can't tell, but in the first, second, third and fourth years, I collected all but about nine or ten thousand dollars of the estate.

Q. How much did you collect of the assetts in 1865 & 1866 each?

Ans. I cannot tell; I made a contract or compromise June the 19th, 1865, with a portion of the parties, & after that I paid no particular attention to amounts received. I considered that all that remained of the Curtis estate belonged to me, as they had conveyed to me all the right, title and interest they had in & to the estate.

Q. In your examination-in-chief, you said that at the time you made the compromise in June, 1865, in addition to seven or eight thousand dollars in the hands of original debtors, you had loaned out, at different times, the funds of the estate, & of these loans there was some twenty thousand dollars uncollected at that time. Please tell me to whom these loans were made, & when made, & in what amounts, & at what rate of interest.

Ans. I can't tell at what dates these funds were loaned. I think
299 a loan was made to West of four thousand dollars. Can't state the rate of interest. Am inclined to think it was six per cent., compounded if not paid annually. I generally drew my notes in that way, but they were sometimes not so drawn, when persons would not give a note so drawn; a loan to Nathan Kouns, date not remembered, for three thousand dollars, which included the old debt due the estate of Curtis and accumulated interest thereon; this loan was made at ten per cent., compound interest. I cannot give the dates of any of the notes included in the twenty thousand dollars referred to. Yes, I can give the date of the notes of Bryan, Benton & Bell, & Babcock, which was dated 12th Sept'r, 1864. I loaned to W'm Hook about twenty-five hundred dollars, at ten per cent. interest; do not remember whether to be compounded or not, but think it was. He was my brother. Took deed of trust on real estate & personal property for security. The personal property was lost during the war. The loan to Bryan, Benton & Bell, & to Babcock was made Sept. 12th, 1864, as follows: two thousand dollars to Bryan, Benton & Bell, with Babcock as security, and two thousand to Babcock, with Bryan, Benton & Bell as security, all at ten per cent. compound interest. I loaned Jno. M. Huston, April 13th, 1863, twenty-three hundred dollars, a part of which, say, one thousand
300 dollars, was due and unpaid June, 1865, interest at ten per cent. compound. I loaned Stephen Craighead, I think in 1864, twelve hundred dollars at ten per cent. compound interest, can't give exact date of this loan. I loaned to W'm H. Richardson sixteen hundred dollars, can't give date nearer than 1864, with interest at ten per cent. compounded; to John W. Veach three hundred dollars, can't come nearer the date than 1864, with interest at ten per cent., I think compounded, outstanding June, 1865; to Wm. Carrington, I think in 1864, twelve hundred and fifty dollars, with six per cent. compounded. I loaned other small amounts to different persons, amounting to about one thousand dollars, with interest at ten per cent. compounded, dates not remembered, but think it was in 1864; am not certain that all bore ten per cent. interest compounded; some may have been at six per cent. and some at no interest at all; or it may have been compounded or not; all these claims were outstanding in June, 1865. As to the amount of the original debts due the estate of Fielding Curtis, dec'd, & outstanding June, 1865, I can name the following to wit: W'm McGhee, four hundred;

C. C. Finley, six hundred dollars; C. C. Carter, five hundred & seventy dollars; Ja's A. Blackmore, six hundred dollars; O. W. Crew's
301 estate, eight hundred and eighty dollars; T. M. & R. Sappington, one thousand dollars; John Baker, three hundred and twenty-five dollars; Jno. A. Leopard's estate, four hundred & forty dollars; Howison &Hudson, five hundred dollars; C. L. Turner & W. Hook, one hundred & thirty-three dollars; Grant & Allen, one hundred dollars; J. L. & E. Chriman, five hundred dollars; Geo. Hossman, two hundred dollars; Jno. West, one thousand & eighty-seven dollars; C. T. & Jno. A. Finley, five hundred and fifty dollars; Warren & Geo. Woodson, one thousand dollars.

Q. Was the debt against McGhee & Watson good in June, 1865?

Ans. It turned out to be good.

Q. Was the debt against C. C. Finley & others a good debt in June, 1865?

Ans. The following debts turned out to be good, to wit: Finley, C. C. Carter, Ja's A. Blackmore, O. W. Crew's estate, T. M. & R. Sappington, Jno. A. Leopard's estate, Howison & Hudson, C. T. & Jno. A. Finley, Jno. Baker, Ellis & Martin Baker, note, which has been renewed and is drawing six per cent., & Allen & Grant. I made the money on this last note, losing in my efforts to collect it, in expences, about the amount of it; the note on the Christmans' was also good in June, 1865; the eighty-five dollar interest note above spoken of, I took Jno.
302 Christman alone for, believing him to be good.

Q. Was either Jno. Duncan, C. C. Carter, W'm D. Hume, W'm Ellis, C. T. & J. A. Finley, or either of them regarded as unable to pay their debts prior to June, 1865?

Ans. I think Mr. C. C. Carter was, and as to the Finleys, C. C. Finley I think was not considered good; as to the other Finleys I know nothing about their solvency; Geo. Hosmer was not good, but Baker, his security, was. I do not know whether he would have been, had he been pressed for his indebtedness in 1865.

Q. As to Craighead, Carrington, Veach & Richardson, how were they as to solvency in June, 1865?

Ans. I thought they were all good at the time, but I could not tell, if they were pressed upon, how it would be. Doctor Veach was a good man; Carrington and Craighead were generally regarded as good. I was the trustee of Richardson, and sold his property under the deed of trust, which did not realize sufficient to pay his debts by, I think, about twenty per cent., though after the sale he paid me up like a gentleman; how he obtained the money to pay me I am at a loss to know.

Q. You say you had to purchase real estate to pay the debt from Allen & Grant. How much did you buy, and what is it worth to-day?
303 Ans. I don't know what it is worth to-day. It is a small lot in the city of Fulton, and I paid five hundred dollars for it & sold it for six hundred dollars, & had to pay to Bennett one hundred dollars for an adverse claim.

Q. At what time did you sell it?

Ans. I don't remember.

Q. What security had you for the Craighead debt?

Ans. I think I had a mortgage on Mr. Craighead's land; don't know how much.

Q. What security had you for the Richardson debt?

Ans. I had that deed of trust in common with others.

Q. What security had you for the Veach debt?

Ans. I had Dr. Veach's name alone.

Q. Had you any personal security for either the Craighead or Richardson debts?

Ans. I had personal security for the Craighead & Richardson debts.

Q. These little debts, which aggregated about one thousand dollars, what security had you for them?

Ans. I can't remember; don't remember.

Q. How much land was held by you for the debt of W'm Hook, and what is the value of that land to-day?

304 Ans. Three hundred and twenty acres; think it is worth about thirty-two hundred dollars; don't think it would sell for it under the hammer.

Q. The original sum loaned to W'm Hook was only fifteen hundred dollars, was it not?

Ans. I think it was more; I loaned him enough to make four thousand dollars when the settlement was made with me by him.

Q. How much land did you hold as security for the debt of John West, & what is it worth to-day?

Ans. Three hundred and seventy acres; I think it is worth no more than five thousand dollars, and I have put at least five hundred dollars worth of improvements on it, & paid the taxes; don't think it would sell for five thousand dollars under the hammer.

Q. Did not John West owe you some twenty-one hundred dollars prior to the commencement of your administration of the Curtis estate; & did not that debt enter into that note you held against him secured by a deed of trust?

Ans. No; nor did I hold any deed of trust or mortgage on his land at any time; he never owed me twenty-one hundred dollars at any time prior to my administration on the Curtis estate.

Q. What money was it that made up the four thousand dollars
305 for which you held his note?

Ans. It was a part of the funds of the Curtis estate.

Q. What security had you for that note?

Ans. Mr. John West's notes only; knowing I was his principal creditor, & that he was an honorable man, & had sufficient property to pay the notes.

Q. Did he owe you anything else besides that note?

Ans. He did. Some seven or eight hundred dollars—I don't remember exactly.

Q. This debt of Cary Turner, & W'm Hook, why have you never collected it?

Ans. I levied on his, Turner's, property; he gave a forthcoming bond; the securities were unsolvent; the property was again returned to Turner. The inventory in 1861 showed this debt to be one hundred and forty-six dollars; probably there was sixty-nine & $\frac{50}{100}$ dollars credited on that note about September 8th, 1863; the note drew ten per cent. interest, and whatever ballance there may be remaining is unpaid at this date.

Q. You collected parts of the following debts: Houston's, Kouns', W. Woodson's, Bryan, Benton & Bell, & Babcock, West, & W'm Hook. Please say what portions of said debts you collected, if any, & on what dates, and what amounts.

306 Ans. I refer, for my answer, to my testimony-in-chief.

Q. Did not you receive the following amounts on the Woodson debt, Ap'l 18th, 1864, three hundred and thirty-two $\frac{13}{100}$ dollars; June, '65, two hundred and eighty-five & $\frac{20}{100}$ dollars; May, 1867, eleven hundred and eighty-eight & $\frac{37}{100}$ dollars?

Ans. I think that that is about right.

Q. Have you received any other payment on the Woodson debt?

Ans. No.

Q. Have you said that the ballance on that debt remaining unpaid, was about four hundred dollars?

Ans. No; I never did. The claims allowed by the assignee, Ja's Douglas, against the estate of Warren Woodson, on the 13th day of Oct., 1863, amounted to twenty-three hundred and seventy-six and & $\frac{74}{100}$ dollars. I think the last payment of eleven hundred and & eighty-eight & $\frac{37}{100}$ dollars was made in May, 1865, instead of 1867, and I produce & file the statement of Mr. Douglass, the assignee, upon that subject. Witness here produced the paper he refers to above, which is hereto annexed, and marked Exhibit Seven.

What portion of the property you purchased of Kouns did you sell, & when, & for how much?

307 Ans. It was after my purchase of the interests of the heirs in Virginia, and sold the one undivided half of it to Henry C. Hayden, for about seventeen hundred dollars.

Q. What is the other half worth to-day?

Ans. Mr. Hayden & I jointly sold the house and lots in Fulton, for the sum of nine hundred dollars, and two pair boots and two pair shoes. We sold two or three other lots, the ballance of the city property, at two hundred & twenty-five dollars; the other half of the country property is worth to-day—I don't know, I can't tell what it is worth.

Q. Has any one offered you the entire amount of debt, interest and costs, which grew out of your dealings with Kouns?

Ans. No person has ever made such an offer. But, after the sale was made under the deed of trust, to Mr. Nathan C. Kouns, seemed to be very anxious that his father should make a better thing out of the property than he had done by the sale, & said it was worth two or three times the money it had brought. I told him then, if he could find a purchaser at an advance on my bid to suit him, provided my debt was satisfied, he could have all the benefit of the advance, & asked him how long a time he wanted me to keep that proposition open; he set some time, & did not effect a sale.

308 Q. When did you purchase the gold spoken of in your examination-in-chief, of whom, & in what sums?

Ans. I purchased the gold from the middle to the end of the year 1864, and from that time on to Nov., 1864; do not know at what particular time, nor what particular prices. I know the average price; I made a note of that. I bought most of it from Gaylord, & the average premium was ninety-seven cents to the dollar, of the aggregated purchases, which included all the gold & silver I had, as deposited by me with Mess. Allen, Copp & Nesbitt, & by them sold as heretofore stated.

Q. If you collected about twenty-five thousand dollars of the funds due the estate during the first year, from taking charge of the estate, in what kind of funds did you receive this sum in?

Ans. As well as I remember, it was in Missouri paper. I know there was no "greenback" circulation, and I received no gold. I aimed to take it in good money.

Q. When you made a compromise with the other heirs of Fielding Curtis, dec'd, than the three old ladies, did you take refunding bonds from them also?

Ans. No. I did not, and didn't care about it. I was told by Jno. J. Payne & P. J. Norris that the old ladies were dissatisfied with having

given a refunding bond, & if I would give up the one they had given they would be entirely satisfied. They, Payne & Norris, said that some of the other parties were not satisfied with giving a refunding bond, & that as they had all gone into the compromise, & I had full controll of the estate, they thought I ought to give up the bond to the old ladies; & the idea of a bond as far as the others were concerned, I told them then, if I gave up in one case I would give up in all, & returned to Norris the refunding bond given by the old ladies, & I did not require the bond from the other parties.

Q. How long after its date before you gave up the refunding bond?

Ans. I gave it up without any consideration, of one cent, in August, 1865.

Q. Were you not afraid you would not be able to collect the full sum of five thousand dollars for each full distributee?

Ans. When I got possession of the entire interests of the heirs of the estate, and full controll of it, I thought I might collect the five thousand dollars, or a little more, by indulging the parties who were indebted to the estate, & extending the time of payments; but when I had only the interests of three of the heirs, the others, not entering into the same arrangement, would likely give me a good deal of trouble.

310 Q. Did you take with you to Virginia something in the shape of a transfer from the heirs, or a refunding bond, from which Mr. Hockaday drew up the papers spoken of in his deposition?

Ans. Don't recollect anything about that. I had no idea of a refunding bond when I started to Virginia. I may have had some such paper as a transfer, but I don't remember.

Q. Why did you take Mr. Hockaday with you to Virginia?

Ans. I took him along for company; I never thought of such a thing as counsel. If I had wanted a lawyer I should have taken Mr. Hayden. I was not anxious to travel alone at that time in a strange country on important business.

Q. How much expenses did you pay for Mr. Hockaday on the trip?

Ans. About from one hundred to one hundred & fifty dollars. We found on arriving the Virginians to be very hospitable people & and our expences while there were very light. Mrs. Gwyn & Mrs. Payne were very kind to us, as was also Mr. Norris & family.

Q. As you did not want any attorney, why did you have Mr. Hockaday draw up the papers?

Ans. Mr. Hockaday was a rapid pensman, & I contended there that as he was better skilled in drawing up an instrument than I was that he should do it.

311 Q. What was the particular trouble in traveling from here to Culpepper Court-House, in Virginia, in June, 1865?

Ans. I don't know that there was any particular trouble; that was just after the close of the war, & in this, Callaway County, & the country around for several counties there were roving bands of robbers, and persons didn't feel safe in traveling, and I supposed that the same state of things might exist in Virginia.

Q. What was the date of the individual note you took of Jno. Christman for interest?

Ans. I can't tell exactly; I thing the note was given some time in 1864. In reference to the Richardson note spoken of yesterday, I am now prepared to give the date of it. It was dated August, 1864; for fourteen hundred & ninety-six dollars. In April, 1866, his property was sold under a deed of trust, & the note, at that time, amounted to sixteen hundred & ninety-seven dollars, & the assetts of the property sold

paid seventy & one-fifth cents to the dollar. When I gave my evidence yesterday in regard to that note, I stated the note to be sixteen hundred dollars. That was about the amount of the note when I went to Virginia in 1865.

Q. Can you state the interest it drew?

Ans. Ten per cent., &, I think, to be compounded.

312 Q. What efforts did you make to collect the debts originally due to Curtis, & outstanding in June, 1865, from the time you took charge of the estate up to June, 1865?

Ans. I had to wait the regular course of administration of the estates for the debts of O. W. Crews, dec'd, and Jno. A. Leopard, dec'd. I didn't bring suit against the securities, for the reason I was assured the estates were good. I called on all those debtors to pay me the money—some once, and some oftener. In the first two years of *of* the administration I believed them all good, but as the war progressed men's solvency became more doubtful.

Q. Will you give me a statement of the amounts you collected of the assetts of Fielding Curtis' estate, showing how much principal & interest you received, and the dates thereof, & the names of persons from whom received, and the rates of interest, and apend the same to your deposition?

I have stated in my evidence the amount, or about the amount, of the bad debts of the estate as inventoried. The ballance has been collected, except perhaps the debt from John Baker, for which I have taken a new note—some seven or eight thousand dollars of the original notes were not collected in June, 1865. I can't tell (as I have already stated) the exact dates or the amounts paid from time to time, whether of principal or interest. The rates of interest was generally ten per

313 cent. simple interest. There were five notes inventoried by me that did not draw any interest until the first day of January, 1862, and there was no rate of interest specified in them. They were as follows: One on Sam'l C. Wood, one on Peter E. Smith, one on W'm I. Hudson, one on J. N. B. Neill, & one on Sutton Crutchfield; these five notes were all due on the first day of Jan'y, 1862. There was one note on William Darby that drew six per cent. interest.

Q. Will you give me a statement showing the amount of money belonging to the estate of Fielding Curtis, dec'd, which you loaned out from time to time, & the names of the persons to whom loaned, & the rate of interest at which loaned, & whether compounded or not, dates of the respective loans, & when due, & the amounts of principal & interest collected by you thereon, the dates of collection respectively, and apend the same to your deposition?

Ans. I cannot give anything additional to what I have already stated in my deposition, that I now recollect. The question embraces a very large ground.

Q. Did you not keep regular accounts of all such matters as they occurred? If so, will you produce copies of such accounts & append the same to your deposition?

Ans. I kept some book-accounts, but they are not entirely per-

314 fect in some respects, & there were many things of which I kept no account at all. At the beginning of the administration I supposed I should be held responsible for the entire estate, and consequently kept no regular account, knowing the amount of the inventory was charged against me. My only care was to keep the money all right, which I have no doubt would all have been satisfactory to the parties interested in the estate had it not been for the misfortunes of the war.

Q. Did you deposit the moneys in your hands of said Curtis' estate with any merchant or banker, or banking-house or firm, or corporation, or other person; if so, will you annex to your deposition copies of such deposit account or accounts, showing also what checks or drafts you made against such deposits, & the names of the person or persons with whom such deposits were made, if any, the dates, items, and amounts?

Ans. I made some deposits with Allen, Copp & Nesbitt, of St. Louis. I do not remember what amount, nor do I remember the dates of the checks drawn on them for the same. I made, as heretofore stated in my deposition, special deposits with Allen, Copp & Nesbitt, of gold and silver coin to the amount heretofore stated. I also deposited the same gold and silver coin that I deposited with Allen, Copp & Nesbitt, in D. M. & J. H. Tucker's safe, in Fulton, Callaway County, Mo., for some length of time previous to depositing it with
315 said Allen, Copp & Nesbitt. Dan'l M. Tucker, of the firm of D. M. & J. H. Tucker, told me that he didn't feel like keeping it any longer, owing to the then existing state of things in the country, & asked me to take it away, which I did. I then took it to the Western Bank in Fulton, & gave it to James S. Henderson, and requested him to deposit it in the safe of the bank, where it remained some length of time, when I took it & deposited it for a short time in my own safe, after which I took it to St. Louis & left it, as before stated, on special deposit with Allen, Copp & Nesbitt. I do not know that I had as much gold & silver coin deposited with Mess. Tuckers and J. S. Henderson as I left with Allen, Copp & Nesbitt. I frequently kept the currency myself. It was war times and all monied men in this part of the country felt a deep interest in their funds—some keeping their funds in hollow logs, some burried it, and some sank it in wells, &c., &c. This is my answer to the question.

Q. Had you not a pass-book showing your deposit account with Allen, Copp & Nesbit, & your checks against said account, & will you not append a copy of the same, or the original, to your deposition?

Ans. I have a pass-book of said deposit account with Allen, Copp & Nesbitt, but I had some other deposits there besides Curtis's estate,
316 & I am unwilling to make a statement of my deposit account, & the checks drawn thereon, for this reason.

Q. In whose name was said deposit account with Allen, Copp & Nesbitt; we mean, was it kept in the name of Zadok Hook simply, or Zadok of Curtis' estate?

Ans. It was kept simply in the name of Zadok Hook.

Q. How much of the moneys of the Curtis estate was deposited with Allen, Copp & Nesbitt?

Ans. I don't remember.

Q. Did you deposit any of the moneys of the Curtis estate, or place any of such moneys under the control or direction of Chase & Brother, or either of them?

Ans. Not a dollar.

Q. Did either of them ever assist you in loaning any of the funds of the Curtis estate?

Ans. Not a dollar.

Q. Did Mr. Jas. S. Henderson act as your agent, or assist you in making any loans of the funds of said estate?

Ans. No, he did not.

Q. Have you any other pass-book showing deposits made by you of funds of said estate, & if so, will you append the original, or a copy thereof, with your deposition?

Ans. No, sir, I have no other.

Q. What other loans did you make of funds of said estate not
317 already mentioned, if any, & in what sums, & at what rate of interest?

Ans. I made some other loans; I can't enumerate all of them; whatever they were, I have collected them; I loaned some of it at six per cent., and some of it at ten per cent. interest.

Q. How many other estates of deceased persons had you in your charge as public administrator of Callaway County, from Feb'y, 1861, to July 17th, 1867, & what is the probable am't of the funds belonging to the same, altogether?

Ans. I should say fifty, & perhaps seventy-five; by reference to my book I could tell exactly. These estates were, in the main, very poor, & consequently the assets that came from them into my hands had to be paid out immediately to creditors, so that the aggregate sum of the funds of all of them in my hands at any one time was very small.

Q. Are these estates all settled up?

Ans. Not all of them fully.

Q. When you deposited the funds of the Curtis estate, or loaned them out at interest, did you do so in the name of Zadok Hook, or in the name of Zadok Hook, administrator of the estate of Fielding Curtis, dec'd?

Ans. I have already stated that the deposits of funds of said estate
were made simply in my own name; and when I loaned any of
318 the funds, I did so sometimes in my own name & sometimes in my name as administrator of said estate.

Q. Will you give us the names of the person or persons to whom you made loans of funds of the Curtis estate in your name, as administrator of said Curtis?

Ans. I can't give them all; don't remember; Dr. N. Kouns' note was one, I believe, that was drawn payable to me as administrator; don't remember the others; didn't think it made any difference. I never loaned any funds belonging to any other estate than Curtis', and should not have done that had the heirs been here. I only did it to try and save it some way or other, & to do the best I could with it.

Q. When you say that all your deposits made of the funds of the Curtis estate in your name, Zadok Hook, simply, do you mean the coin was also thus deposited?

Ans. Yes, sir, I do; all the coin was deposited in my name, simply.

Q. Since you made the compromise in Virginia in 1865 with the heirs of said estate, what have you done with the funds of said estate remaining in your hands after that date, and how have you used and treated the same?

Ans. I had no funds in my hands at that date, after getting through
with that opperation. I have collected since that time some of the
319 funds in cash, & paid off some of the money I had borrowed to make that compromise; other collections have been made by purchase of property, as before stated. I considered after the compromise that the estate was fully in my hands, & that I had a right to do with it as suited my own convenience; I mean I claimed to be the owner of it, according to the agreement; & the losses I have sustained has been heretofore stated.

Q. Did the good & available assets of the Curtis estate in June, 1865, exceed in value twenty-six thousand six hundred dollars?

Ans. I had at that time of the funds of the Curtis estate a little over

sixteen thousand dollars. I supposed that out of the notes I then held in my hands, I could, undoubtedly, make ten thousand dollars.

Q. Why did you pay the heirs at the rate of eight thousand four hundred dollars over what you considered good and available assetts of said estate?

Ans. For this reason: they, Mrs. Gwyn, Mrs. Payne, & Mrs. Susan Curtis, by their advisers & agents, agreed that they would transfer to me all their right, title, & interest in the estate of Fielding Curtis, dec'd, so that I might have full & perfect controll of it, if I would pay them five thousand dollars each for her interest in said estate, and
320 they proferred to give me a refunding bond for twelve hundred dollars each if I should not collect the sum of five thousand dollars each out of the notes of the estate, & they assured me that they had no doubt that the other heirs of the estate would enter into the same arrangement; & I thought by getting full controll of the outstanding debts, I could, by extending the time to the debtors, & taking additional security, *I could* realize the five thousand dollars to each heir, & might make a little profit by the operation.

Q. Were not the outstanding claims you have mentioned as such, in June, 1865, worth, in any event, twenty thousand dollars at that time?

Ans. I cannot say "in any event." It has so turned out that those outstanding debts will realize about that amount, as near as I can judge.

Q. Which one of said outstanding claims did you save by indulgence, or by obtaining additional security?

Ans. I think I indulged them all that asked indulgence; I don't remember that I took any additional security; I purchased the real estate of Jno. West as soon as possible.

Q. Did you ever render to the county court of Callaway County a statement, on oath, of the amount of money actually in your
321 hands as administrator of the estate of Fielding Curtis, dec'd?

Ans. I did not. They never required me to do so; if they had, I should have readily done so.

Q. Did you obtain an order of said county court in July, 1867, relieving you from making any further settlement in the estate of Fielding Curtis, dec'd, till the further order of said court?

Ans. Said order was made, & I supposed I procured it, as I considered that I had a right to the entire estate. I had intended to make a final and complete settlement with the court when I got everything relating to the estate fully settled up, and file my receipt there as sole owner of the estate, but suit having been instituted against me by the heirs of said estate, I concluded to postpone the settlement indefinitely; hence the order referred to was made. After this suit was brought, Judge Ansel, one of the county court at the time of bringing said suit, gave the opinion that the county court of Callaway County had no further jurisdiction over the estate; that the matter had gone to the Federal courts; that whenever I should make a final settlement, I intended to file with the court my contracts or copy thereof.

Q. What were the defendants in this suit other than yourself probably worth in June, 1865, in their aggregate property or wealth?

Ans. I can't answer.

322 Q. Do you think they were worth ten thousand dollars?

Ans. Yes, sir.

Q. Were they worth twenty thousand dollars?

Ans. I suppose they were worth one hundred thousand dollars, though I don't know what their liabilities were.

And further deponent saith not.

ZADOK HOOK.

And the Exhibit No. 1, annexed, and referred to in the foregoing deposition of Zadok Hook, is in the words and figures following, to wit:

Exhibit No. 1 to deposition of Z. Hook.

ZADOK HOOK, Esq.,

Fulton, Callaway County, Mo.

(Post-mark illegible with 3c. stamp.)

And the Exhibit No. 2, referred to in said deposition of Zadok Hook, is in the words and figures following, to wit:

Exhibit No. 2 to said depositi'n of Hook.

CULPEPER CO. HO., 19*th Ap'l*, 1861.

ZADOK HOOK, Esq.

DEAR SIR: Your letter dated March 6th is received, and I am very much obliged to you for the information you have given me, and I will in a short time give you the names of the parties interested in my brother's estate, either by letter or by an agent.

Yours, truly,

ABRAHAM CURTIS.

And the Exhibit No. 3, annexed to said last-named deposition, is in the words and figures following, to wit:

Exhibit No. 3 to depos'n of Hook.

THOMAS ALLEN. SAM'L COPP, JR. ROB'T N. NISBET.

323 Sight exchange on all the principal cities of the Union for sale, in sums to suit. Collections faithfully attended to, and proceeds promptly remitted on the day we receive payment.

OFFICE OF ALLEN, COPP & NISBET, BANKERS,
NORTHWEST COR. SECOND & CHESNUT ST'S,
St. Louis, Mo., 23d Feb'y, 1865.

Mr. ZADOK HOOK, *Fulton, Mo.*

DEAR SIR: Your favor of 20th inst. received to-day, &, as instructed, we have withdrawn from special deposit with us the three p'ck'g's named in your letter, & sold same for your ª|c, viz:

P'k'ge No. 20, rec'd 5th Aug., '64. Am'n gold coin, $571, and silver, 55c.	571 55
" " 28, " 1 Oct. " Silver coin	120 33
" " 60, " 1 Feb'y, '65. Am'n, $960, & foreign gold, $8	968
98% p'm on $1,539, gold	1,508 22
85% " " $120 88, silver	102 75
To your cr. T. N.	$3,270 85

The bag of silver coin also contained 50c. counterfeit p's & a small copper coin, which we hold subject to your order. We have credited the silver at the highest quotation for large coin, while 80 is the price for small, which was mainly the size in the above lot. The $571 gold

was $5s, $2 50s, & $1 p's, but we placed it at same price with the $960, as an average, at 198, the highest buying rate early to-day against quotation of 198¾ from New York.

Resp'y,

ALLEN, COPP & NISBET.

And the Exhibit No. 4 annexed to said deposition is in the words and figures following, to wit:

Exhibit No. 4 to deposit'n of Hook.

THOMAS ALLEN, SAM'L COPP, JR., ROB'T N. NISBET

324 Sight exchange on all the principal cities of the Union for sale in sums to suit. Collections faithfully attended to, and proceeds remitted on the day we receive payment.

OFFICE OF ALLEN, COPP & NISBET, BANKERS,
NORTHWEST COR. SECOND & CHESNUT ST'S,
St. Louis, Mo., 15th May, 1865.

Mr. ZADOK HOOK, *Fulton, Mo.*

DEAR SIR: We have your favor of 10th inst., rec'd by us on 13th, (Saturday,) instructing us to convert your gold coin, amo't'g to $11,840, held by us on special deposit, into U. S. legal tenders, & place same to your credit. We proceeded at once to test the market, and found the best offer 28% p'm, most buyers being disposed to hold off & take only small sums, while many would not offer the figures named for so large an amount. We could not nett you 28%, deducting our com's of ¼, & Gov't tax $\frac{1}{10}$, besides which we now have to pay on sales of coin, & therefore took the responsibility of waiting until to-day. This morning, on rec't of early desp'h's opening 129⅛, followed by 130, we were offered from 127 to 128¼, highest, and without waiting sold, say, am't gold coin held by us for your ac. in two bags, & 8,840+3,000= 11,840

At 28% p'm, nett 3,315 20

$15,155 20 T. N.

To your credit, less $\frac{1}{10}$% on proceeds, c'y..... ..... 15 15

$15,140 05 T. N.

Resp'y,

ALLEN, COPP & NISBET.

And the Exhibit No. 5 annexed to said deposition is in the words and figures following, to wit:

325 *Exhibit No. 5 to depos'n of Hook.*

$600 00.

Received from Z. Hook, adm'r F. Curtis, six hundred dollars in full for his State, county, military, and income tax for the year 1865, in Callaway County, Missouri.

W. KING, *Collector.*

$610 00.

Received of Zadok Hook, adm'r of the estate of Fielding Curtis, de-

ceased, six hundred & ten dollars in full and complete payment of our distributive share in and to the estate of said Fielding Curtis, deceased.

Given under our hands this 16th day of November, 1865.

W'M J. SAPPINGTON.
VIRGINIA W. SAPPINGTON,
By W'M J. SAPPINGTON.

[2-c't U. S. stamp.]

UNITED STATES INTERNAL REVENUE, No. 76,
COLLECTOR'S OFFICE 4 DISTRICT, STATE OF MO.,
Troy, Sept. 5th, 1865.

Received of Fielding Curtis' est., Zadok Hook, adm'r Fulton, the sum of one hundred & sixty-three & $\frac{28}{100}$ dollars in full for his excise tax on—

8.	Income, 1862–'3	$ 24
908.	" 1863, "	$27 24
908.	Spec. " '5	$45 40
1808.	Income, 1864–'5	90 40
	Total	$163 28

as per —— list of the assessor of said district sent to me for collection, for the —— ending ——, 1865.

A. H. MARTIN, *Collector.*

Fees adjudged vs. Zadok Hook, adm'r of Fielding Curtis, dec'd, in Boone cir. c't, on exon's.

	No. 2099 vs. Martin & Biggs, Todd	2 00		
326	2100 " J. L. C. & Chis, Waugh	50		
				2 50
2100	" J. L. C. & E. E. Chisman, Todd	2 65		
	Waugh	1 00		
				3 65
2101	" Richard Sappington & C., Todd	2 00		
	Waugh	50		
				2 50
	On suit of Hook vs. Selby, Swift & C., Todd	15 60		
	Waugh	4 80		
				20 40
				$29 05
	2207 vs. James H. & E. A. Starks, Todd	2 10		
	Waugh	1 00		
				3 10
				32 15

Rec'd pay. of Z. Hook, adm'r of F. Curtis, dec'd, May 29, 1863.

J. H. WAUGH,
Sh'ff Boone Co., Mo.

Received of Zadok Hook, adm'r of the estate of Fielding Curtis, deceased, the sum of three hundred & fifty dollars in full for services rendered as att'y, in bringing suit for him as administrator of the estate aforesaid, in the following cases, to wit:

Hook vs. Martin and Bigg.
" " Young & Davis.

" " D. D. Sappington.
" " Patton Strode et al.
" " Biggs & Martin.
" " Christman.
" " Tyce Sappington.
" " Stake.
" " Ja's Davis et al., and collecting the amounts due under exe-
327 cution, &c.; also, the amounts due from W. Woodson's assignee & James Wiefly.

J. R. SHIELDS.

MAY 23D, 1865.

And the Exhibit No. 6 annexed to said deposition of Zadok Hook is in the words and figures following, to wit:

Exhibit No. 6 to depos'n of Hook.

Am't paid out altogether to the heirs of F. Curtis' est....	$44,402 68
Am't for monument, taxes, funeral expenses, expenses of last illness, legal services, board, & other expenses....	5,486 57
Commission received	349 52
	50,238 77
Loss on gold coin.....	8,184 75
Interest on money expended for gold am't, $23,324 80....	2,099 22
Loss on Bryan, Benton & Bell and Babcock.....	4,307 75
Loss on Jno. M. Huston.....	999 80
Loss on Nathan Kouns' debt	638 73
Loss on Woodson debt	1,370 00
Loss on money loaned Jno. West.....	2,200 00
Cary L. Turner debt	175 00
Jno. L. Chrisman.....	85 00
Expenses to V'a—two trips	300 00
Expenses of various trips to S't Louis in handling and taking care of the funds	500 00
Loss on W. Hook debt.....	500 00
Commission not yet deducted	2,500 00
Internal revenue not yet deducted.....	1,000 00
	75,099 02

And the Exhibit No. 7 annexed to said deposition of Zadok Hook is in the words and figures following, to wit:

328 *Exhibit No. 7 to deposition of Hook.*

Copy of a refunding bond executed by David M. Burnam, John Baker, Squire Burnam, and A. M. Burnam to Zadok Hook, administrator of the estate of Fielding Curtis, deceased, to be attached to the deposition of said Hook, in a certain cause now pending in the United States circuit court for the districts of Missouri, sitting in chancery, wherein Ann Payne & others are plaintiffs, & Zadok Hook and others are defendants.

(Copy.)

$4,341\frac{65}{100}$.

Know all men by these presents, that we, David M. Burnam as prin-

cipal, and John Baker, Squire Burnam, and A. M. Burnam as securities, are held and firmly bound to Zadok Hook, administrator of the estate of Fielding Curtis, deceased, in the penal sum of five thousand dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents, sealed with our seals, signed and delivered this 11th day of November, 1861.

The condition of this obligation is such, that, whereas Zadok Hook, administrator of the estate of Fielding Curtis, this day, and within three years after the date of his letters of administration, paid over to David M. Burnam and Ann C. Burnam, his wife, the sum of forty-three hundred and forty-one dollars & sixty-five cents, being a part of the distributive share belonging to them in right of the said Ann C.
329 Burnam, as a distributee of said estate: Now, if said David Burnam shall well and truly pay, or cause to be paid, or refund his due proportion of any debt which may afterwards be established against said estate, and the costs attending the recovery thereof, and shall also well and truly pay and refund to said Hook so much of the amount herein stated to have been delivered and paid over as will make any other heir or heirs equal to him & wife, according to their respective rights as distributees, in case of any deficiency in said estate from loss of debts due the estate, or from any other cause, then this obligation to be void; otherwise to remain in full force and virtue.

(Signed) DAVID M. BURNAM. [SEAL.]
JOHN BAKER. [SEAL.]
SQUIRE BURNAM. [SEAL.]
A. M. BURNAM. [SEAL.]

STATE OF MISSOURI,
County of Callaway, ss:

I, James W. Overton, a notary public within and for the county and State aforesaid, do certify that the within & foregoing is a true & correct copy of the refunding bond alluded to in the caption thereto annexed.

Witness my hand & official seal this the 22d day of December, 1869.

[SEAL.] JAMES W. OVERTON,
Notary Public.

[5c. U. S. rev. stamp.]

And the Exhibit No. 8, annexed to said deposition of said Zadok Hook, is in the words and figures following, to wit:

330 *Exhibit No. 8 to deposition of Hook.*

COLUMBIA, MO., *May* 23, 1865.

I, Joseph B. Douglass, assignee of Warren Woodson, in the county of Boone and State of Missouri, do hereby certify that, on the 13th day of October, 1862, *that* I, as such assignee, allowed against said Woodson the sum of twenty-three hundred seventy-six & $\frac{14}{100}$ dollars in favor of Zadok Hook, administrator of the estate of Fielding Curtis, and that since that time I have made him three payments in the way of dividends, amounting in the aggregate to seventy-six cents to the dollars on said allowance, or to the sum of eighteen hundred six & $\frac{32}{100}$ dollars, which said sum of money is the pro ratta share to said estate of the assets of said Woodson's estate; that I have exhausted all the estate of said Woodson in paying his debts, and that there yet remains unpaid the

balance of said claim, with the accruing interest on the whole debt, which will prove a loss to said Curtis's estate.

Given under my hand the day and date aforesaid.

J. B. DOUGLASS,
Assignee Warren Woodson.

Loss on the above-named debt up to 22 May, 1865, $942 76.

Deposition of John J. Payne.

Deposition of John J. Payne, taken before James B. Dey, notary public, at Culpepper Court House, Virginia, on the 8th day of March, 1870.

331 1st question by James W. Green, counsel for the plaintiffs and appearers. Where do you reside and what is your age?

Answer. I reside in Madison County, Va.; age, 48 years.

2nd question by same. What relation are you to the late Fielding Curtis, of Missouri?

Answer. Nephew.

3rd question by same. What relation was the late Abraham Curtis, of Culpepper County, Va., to the late Fielding Curtis?

Answer. Brothers.

4th question by same. Did the said Fielding Curtis, at the time of his death, leave either father or mother, grandfather or grandmother, or other lineal ancestor living?

Answer. None to my knowledge.

5th question by same. State all you know about Zadok Hook, as administrator of Fielding Curtis, paying to the late Abraham Curtis money, as one of the distributees of the late Fielding Curtis.

Answer. After making the settlement with my mother & two (2) aunts, he requested me to see my uncle, Abraham Curtis, and the heirs of Ezekiel Wilhoite, if they would make a settlement on the same terms. I remarked to Mr. Hook that I did not think my uncle, Abraham Curtis, would be willing to encumber his estate with the refunding bond
332 of twelve hundred ($1,200) dollars, but Mr. Hook remarked if they would all sign with the exception of my uncle Abraham, that I could release him; if he could get the estate into his own hands, that he might save himself, & they would have nothing to refund. Mr. Hook paid to me the sum of five thousand ($5,000) dollars, which I paid over to my uncle Abraham & took his receipt in full for his interest in the estate.

6th question by same. What did Mr. Hook say to you the interest of Abraham Curtis in the estate of Fielding Curtis was worth, and what did he say about the losses of the estate, if anything?

Answer. He said the loss was very considerable; that he had received very little money belonging to the estate; that if he could get it in his own right, that he could save more for the legatees than any one else, he thought. He thought it was worth thirty-eight hundred ($3,800) dollars.

7th question by same. Did you or not, at the time of paying your uncle Abraham, tell him what Mr. Hook said?

Answer. I remarked to Mr. Hook, before any money was paid, before he signed this article of agreement, that I could release him from the twelve hundred ($1,200) dollars; that Mr. Hook said if he could
333 get the whole estate into his hands, he could manage it so that they would have nothing to refund.

8th question by same. Did you or not at the time, or before paying

the five thousand ($5,000) dollars to your uncle Abraham, tell your uncle Abraham what Mr. Hook said his (Abraham Curtis') interest in the estate of Fielding Curtis was worth?

Answer. He thought it was worth thirty-eight hundred ($3,800) dollars; that he was willing to pay that amount; that I told my uncle that Mr. Hook said this article of agreement might release my uncle Abraham of the twelve hundred ($1,200) dollars, if they would all sign the refunding bond; I might release my uncle from that amount.

9th question by same. Where were you and Mr. Hook when he paid you the five thousand ($5,000) dollars for your uncle Abraham?

Answer. I was in Baltimore.

10th question by same. Where were you and your uncle Abraham when you paid him the five thousand ($5,000) dollars?

Answer. I was in Orange County, Virginia, at Curtis Wilhoite's.

11th question by same. About what time did you pay the five thousand ($5,000) dollars to your uncle Abraham?

334 Answer. I think it was in June or July, 1865.

12th question by same. Did or not Mr. Hook show you any statement or account showing the value or losses of the estate of Fielding Curtis?

Answer. He showed none.

13th question by same. Did or not Mr. Hook make you any compensation for settling with your uncle Abraham & the heirs of Ezekiel Wilhoite?

Answer. He told me he would pay me for my trouble, which he did to my satisfaction.

Cross-examination:

1st question by T. T. Hill and Eustace Gibson, counsel for the defendant, Zadok Hook. Were you present at the settlement between Mr. Hook and the three (3) ladies referred to in your deposition above, viz, Mrs. Nancy Guinn, Mrs. Ann Payne, and Mrs. Susan Curtis?

Answer. I was.

2d question by same. Was this the first time that you had met with Mr. Hook?

Answer. It was.

3d question by same. Were you present as the adviser & business friend of these ladies?

Answer. I was for my mother.

4th question by same. Was any one else present than the ladies referred to? if yea, state who.

335 Answer. Peter J. Norris and my two (2) sisters, viz, Sarah A. and Mary F. Payne, and Mr. Hockaday.

5th question by same. In what capacity was Mr. Norris present?

Answer. I suppose acting for his mother-in-law, Mrs. Guinn.

6th question by same. Was he (Norris) consulted with by these ladies and yourself, and did he give any advice upon the matters in question?

Answer. He was consulted, and did give advice.

7th question by same. In this settlement did you and Mr. Norris succeed in getting Mr. Hook to give more than he first proposed to these parties whom you represented?

Answer. We did.

8th question by same. Did not Mr. Hook consent to your demands upon the condition that the balance of the heirs would be gotten to settle on the same terms?

Answer. He did after the settlement between my mother and my two (2) aunts.

9th question by same. In agreeing to pay you and Mr. Norris the five thousand ($5,000) dollars for each of the three (3) ladies, was it not with the understanding that the other heirs would take the same amount?

Answer. There was nothing said in reference to it; it was not alluded to at all.

336 10th question by same. Afterwards, when you met Mr. Hook in Washington to receive this money, was there not an agreement made by which Mr. Hook agreed to return the refunding bonds given by these ladies, if you and Mr. Norris could get all the heirs to make a similar adjustment with him?

Answer. I remarked to Mr. Hook that I did not think my uncle would give this refunding bond; that he was old, and that he would not encumber his estate. Mr. Hook then remarked that if they would all sign with the exception of my uncle, I could release him.

11th question by same. Were you acting as an agent of Mr. Hook in making these settlements with your relations, or were you in their interest?

Answer. I was not in their interest but by the request of Mr. Hook.

12th question by same. Then you mean to say that as an agent of Mr. Hook you were trying to injure the interest of your own relations?

Answer. I knowed not what the estate was worth except by his representation.

13th question by same. Do you mean to say that upon the representation of an entire stranger you entered his employ and interest to get your relations blindly into a settlement of a large sum of money

337 with him?

Answer. I opposed it out and out to every legatee.

14th question by same. Then you were in no sense an agent of Mr. Hook in procuring these settlements?

Answer. I was by request to see the parties.

15th question by same. If you were an agent for Mr. Hook, how came you to advise against his interest?

Answer. He asked me to see the other legatees; that he was a long-ways from home, & if they were willing to settle upon the same terms that he would settle with them.

16th question by same. Now, Mr. Payne, did you not consider at the time that Mr. Hook asked you to see the other legatees as their relation and friend, and not as an agent of his, or did you consider you were being bound as his agent to his interest?

Answer. I did, so far as his representations to me.

17th question by same. You say that you considered yourself bound to Mr. Hook's interest as agent; then do you think you were acting a fair or honorable part by him when you advised your relations not to do what you say he had employed you as his agent to get them to do?

338 Answer. I stated to them what Mr. Hook had stated to me; that if I was a full legatee I would make no compromise, but they could do as they thought best; on the statement I had made to them, my uncle Abraham remarked that he thought it was not as much as he ought to get; that he was old; that five thousand ($5,000) dollars was worth more to him then than ten thousand ($10,000) dollars would be worth in five years hence.

18th question by same. Did you represent yourself to them as Mr. Hook's agent?

Answer. I went to them as a friend of Mr. Hook; I supposed him to be a gentleman; that he had given me a true statement what the estate was worth.

19th question by same. Did you not go to them as their friend also?

Answer. I did, and left the case open with them as what they had best do from his statement to me?

20th question by same. Now, Mr. Payne, did you really consider yourself anything more than a mere go-between for all the parties—as a sort of mutual friend?

Answer. I did not consider myself an agent of Mr. Hook.

339 21st question by same. In another portion of your deposition, you speak of compensation from Mr. Hook; did Mr. Hook allow you anything more than your reasonable expenses in meeting him?

Answer. There was nothing understood between Mr. Hook and myself and Mr. Norris and myself until after the parties had all signed; Mr. Hook then wished to know what he should pay us for our trouble. We told him we thought he ought to pay us one hundred ($100) dollars for the two (2.) There were some other little expenses, (travelling,) the amount I don't recollect, viz, from Washington to Culpepper C. H., which Mr. Hook paid.

22d question by same. Did not the heirs of Fielding Curtis agree to pay you the usual compensation for the collection of their parts from Mr. Hooks?

Answer. There was no understanding as to what they should pay me until after I drew the money from Mr. Hook. They asked me if I would be satisfied with 5 %, and paid me 5 % (per centum.)

23d question by same. Look at these papers marked Exhibit A, Exhibit B, and Exhibit C, and say whether they are the genuine papers delivered by the various parties whose names are signed thereto, and to

340 which your name is subscribed as attesting witness, to be handed to Mr. Hook.

Answer. They are.

24th question by same. Did you know of a letter written by Mr. Hook to Mr. Abraham Curtis, in 1861, in which a statement in full of the estate of Fielding Curtis was made, and did the balance of the heirs know of that same letter?

Answer. My uncle showed it to me in 1861. I know nothing about the balance.

25th question by same. Did you ever mention the contents of that letter to the other heirs, and did they not all base their settlements upon its statements—that is, was it not by that letter that you and they knew the value of the estate?

Answer. I had mentioned the matter to my mother, Mrs. Ann Payne, in 1861, but she settled upon the statement of Mr. Hook, in 1865. He represented the estate had lost more than half of its value; that he had collected very little money belonging to the estate.

26th question by same. Did not Mr. Hook tell you then, in answer to a question of yours, that he had written the letter, and that the estate was worth upwards of sixty thousand ($60,000) dollars, besides

371 negroes, and was not this in the presence of all the parties?

Answer. He did, and it was, I think, but stated at the same time that Missouri had suffered very much from the war; that a large portion of this money was loaned to slaveholders & they had "gone up," and that was all they were worth & had no other property.

27th question by same. In the interview between Mr. Hook and your family connections at your mother's in June, 1865, did Mr. Hook fail to

answer any questions or give any information that any of you required or requested?

Answer. They were all disposed to take his say-so. None, that I remember, viz, I mean that he did not fail to answer any questions or refuse to give any information.

28th question by same. Did you at the time consider his answer & statements as frank, full, & free from suspicion?

Answer. I don't know that I can answer this; the reason why, the parties did not know at the time, and had no way to know what the estate was worth; for that reason I was opposed to the settlement.

29th question by same. Then you mean to say you had no confidence in his statements?

Answer. He made this statement: that they had had an elec-
342 tion in Missouri, & I think he stated that he voted the morning he left for Virginia, & he believed that they would elect the black republican in his place, and the business would be taken out of his hands and put into his; therefore he was anxious to settle up the estate before it could go into his hands; that he could do a better part by the legatees than any one else; that if it went into the hands of the black republican, 'twas doubtful whether they would get anything.

30th question by same. Then did you mean to say you had no confidence in his statements?

Answer. I had never seen Mr. Hook before the morning at my mother's; we could only take his statement for what it was worth; we knew nothing about it.

31st question by same. Have you ever given your deposition in this case before; if so, when?

Answer. I have; I think some time in September last.

32d question by same. Did you not say then that you considered all his answers candid & that he gave no false information so far as you have been able to discover?

Answer. I might have said so up to that time.

33rd question by same. When did you get information, if any, which led you to believe his statements then made were false?

343 Answer. I make no such statement now.

34th question by same. Have you any reason now to believe that the statements he then made were false?

Answer. I have a verbal statement from my brother, James W. Payne, that makes me doubtful about the statement he made.

35th question by same. Where does your brother reside, and where is he now?

Answer. In Greene County, Virginia. I don't know where he is now; he may be there or he may be somewhere else.

36th question by same. Do you know whether or not he has ever been summoned to give evidence in this case; and if not, why he has not been summoned here to give evidence in this case?

Answer. I know not.

37th question by same. Did Mr. Hook say anything to you about having loaned out some of the money of the estate, & having lost himself thereby?

Answer. Not to my recollection, but stated he had collected very little.

38th question by same. Was it not understood by all the parties from Mr. Hook's own statements that a settlement of the estate, strictly in accordance with the laws of Missouri, would show a much larger bal-

ance against him than the basis of settlement, adopted at Mrs. Payne's?

344 Answer. The parties were perfectly willing to settle for the sum of five thousand ($5,000) dollars to each full legatee; Mr. Hook refused to do so. Mr. Norris & myself made a proposition to Mr. Hook, that the parties would give to him a refunding bond of twelve hundred ($1,200) dollars each, & whatever it might lack in making up the five thousand ($5,000) dollars, they would refund back to him.

39th question by same. Was it not well understood amongst you, from Mr. Hook's own statement, that a strict settlement, according to the laws of Missouri, would show each full legatee entitled to a more considerable sum than five thousand ($5,000) dollars each, & that Mr. Hook was to be allowed to make that balance for the cash payment of five thousand ($5,000) dollars down?

Answer. Yes; he required this refunding bond, & give himself five (5) years to wind the estate up; by having the estate in his own right he could save himself, & the legatees would have nothing to refund.

40th question by same. Afterwards, when you met Mr. Hook, did you not tell him that if he would give up these refunding bonds, all parties would be satisfied, & did he not thereupon surrender these bonds?

345 Answer. I told him this: that they were satisfied, but if they found out he had taken the advantage of them, they would be after him with a sharp stick. He surrendered the bonds.

41st question by same. You say that your uncle Abraham knew that he was entitled to more than five thousand ($5,000) dollars, but considered the five thousand ($5,000) dollars then as worth ten to him in five years. Don't you know that he got this information of the value of the estate from a statement made to him by letter by Mr. Hook himself?

Answer. He remarked to me when I payed him the money that he didn't believe he was getting as much as he ought to get; that he had no doubt, though, the estate had lost considerable from the effects of the war.

42d question by same. Don't you know that your uncle knew, by a statement made to him by letter by Mr. Hook, what the full amount of the estate was, with which Mr. Hook was chargeable?

Answer. I know that my uncle received a letter from Mr. Hook stating what the estate was worth, or what he thought it was worth: sixty-odd thousand ($60,000) dollars, besides the negroes. My uncle never saw Mr. Hook himself.

43rd question by same. Did you not know that the clerk's office of the county in which Fielding Curtis died would furnish an inventory of his estate?

346 Answer. Mr. Hook came in so soon after the surrender that I had thought nothing about it.

44th question by same. Did you not know that two (2) of the heirs of Fielding Curtis lived in an adjoining county to the one in which he died?

Answer. I did not. I did not know in what portion of Missouri they lived. He told me that he had paid the legatees the sum of four thousand ($4,000) dollars, that is for one full share.

45th question by same. Who was present at this conversation?

Answer. Mr. Norris, my two aunts, Mrs. Guinn & Mrs. Curtis, & my mother and two sisters.

And further the deponent sayeth not.

JNO. J. PAYNE.

And the Exhibit "A," annexed and referred to in the foregoing deposition of John J. Payne, is in the words and figures following, to wit:

Exhibit "A" to depositiom of John J. Payne.

For and in consideration of the sum of five thousand dollars to me, the undersigned, Abraham Curtis, of the county of Orange, in the State of Virginia, in hand paid by Zadok Hook, of the county of Callaway & State of Missouri, the receipt of which I do hereby acknowledge, I, the said Abraham Curtis, do hereby sell, transfer, assign, and set over to the said Hook, all my right, title, interest, and claim in and
347 to all sums of money, personal effects, and choses in action, to which I am or may be entitled, as one of the heirs-at-law and distributees of the estate of Fielding Curtis, late of the county of Callaway in the State of Missouri, I being a brother of the said Fielding Curtis, deceased, and as such, interested in said estate; and in consideration of the premises, I do further hereby release, absolve, and acquit Zadok Hook, of the said county of Callaway & State of Missouri, from all liability or indebtedness to me as one of the heirs, as aforesaid, by virtue of his office and trust as the administrator of said estate, this instrument being intended as a full and final settlement between us.

Given under my hand and seal this 18th day of July, A. D. 1865.

ABRAHAM CURTIS. [SEAL.]

Attest:
CURTIS WILHOIT.
JOHN J. PAYNE.

[$2 50 U. S. rev. stamps.]

And the Exhibit "B," annexed and referred to in said deposition of John J. Payne, is in the words and figures following, to wit:

Exhibit "B" to deposition of Jno. J. Payne.

For and in consideration of the sum of seven hundred and fourteen dollars and twenty-eight cents, to each of us, the undersigned, Curtis Wilhoit & Sarah Sims, of the county of Orange, and Milton Wilhoit and Ezekiel Wilhoit, of the county of Albemarle, all of the State of Virginia, in hand paid by Zadok Hook, of the county of Callaway
348 & State of Missouri, the receipt of which we do hereby acknowledge, we, the said Curtis Wilhoit, Sarah Sims, Milton Wilhoit, and Ezekiel Wilhoit, do hereby sell, transfer, assign, and set over to the said Hook all our right, title, interest, and claim, in and to all sums of money, personal effects, and choses in action, to which we and each of us are or may be entitled as heirs-at-law and distributees of the estate of Fielding Curtis, late of the county of Callaway in the State of Missouri, we and each of us being children of Sally Wilhoit, (now deceased,) who was a sister of the said Fielding Curtis, dec'd, and as such interested in said estate; and in consideration of the premises, we do further hereby release, absolve, and acquit Zadok Hook, of the said county of Callaway and State of Missouri, from all liability or indebtedness to us as heirs as aforesaid, by virtue of his office and trust as administrator of

said estate, this instrument being intended as a full and final settlement between us.

Given under our hands this 18th day of July, A. D. 1865.

MILTON WILHOIT. [SEAL.]
EZEKIEL WILHOIT. [SEAL.]
SARAH A. SIMMS. [SEAL.]
CURTIS WILHOIT. [SEAL.]

Attest:

JNO. J. PAYNE.
ABRAHAM CURTIS.

[$1 50 U. S. rev. stamps.]

And the Exhibit "C," annexed and referred to in said deposition
349 of John J. Payne, is in the words and figures following, to wit:

Exhibit "C" to deposition of John J. Payne.

For and in consideration of the sum of one hundred and nineteen dollars and five cents to each of us, the undersigned, William Brooking, Robert Brooking, Curtis Brooking, John Brooking, James Brooking, Ezekiel Brooking, all of the county of Orange in the State of Virginia, in hand paid by Zadok Hook, of the county of Callaway in the State of Missouri, the receipt of which we do hereby acknowledge, we, the said William Brooking, Robert Brooking, Curtis Brooking, John Brooking, James Brooking, and Ezekiel Brooking, do hereby sell, transfer, assign, and set over to the said Hook, all our right, title, interest, and claim in and to all sums of money, personal effects, and choses in action, to which we and each of us are or may be entitled as heirs-at-law and distributees of the estate of Fielding Curtis, late of the county of Callaway and State of Missouri, we and each of us being children of Mildred Brooking, (now deceased,) who was a daughter of Sally Wilhoit, (now deceased,) who was a sister of said Fielding Curtis, deceased, and, as such, interested in said estate; and in consideration of the premises, we do further hereby release, absolve, and acquit Zadok Hook, of the said county of Callaway & State of Missouri, from all liability or indebtedness to us, as
350 heirs as aforesaid, by virtue of his office and trust as administrator of said estate, this instrument being intended as a full and final settlement between us.

Given under our hands & seals this 18th day of July, A. D. 1865.

WM. F. BROOKING. [SEAL.]
CURTIS BROOKING. [SEAL.]
JOHN BROOKING. [SEAL.]
E. W. BROOKING. [SEAL.]
JAS. M. BROOKING. [SEAL.]
ROB'T W. BROOKING. [SEAL.]

Attest:

CURTIS WILHOIT.
JNO. J. PAYNE.

[50 c. U. S. rev. stamp.]

Deposition of Jeremiah Morton, jr.

Deposition of Jeremiah Morton, jr., taken before James B. Day, notary public, at Culpepper, in the State of Virginia, on the 8th day of March, A. D. 1870.

1st question by James W. Green, counsel for the plaintiffs & appearers. Look at this paper now shown you, marked "Exhibit No. 1,

& to which your name is subscribed as attesting witness, & state whether Abraham Curtis delivered it as his act & deed in your presence.

Answer. Yes; he did.

2nd question by same. Is the signature, Jeremiah Morton, jr., subscribed to said paper as attesting witness, in your handwriting?

Answer. It is.

3rd question by same. What is your age and residence?

351 Answer. My age is 38 years, and I reside in Culpepper County, Va.

Cross-examination:

1st question by T. T. Hill & Eustace Gibson, counsel for the defendants. Do you know anything about the circumstances under which this power of attorney was obtained or given?

Answer. My knowledge of it, of course, must be very slight; I might state generally that I had heard of this expected legacy from Missouri; in going down the public road from this place to my home, some eight (8) miles, I found a power of attorney, signed by Mrs. Anne Payne and one or two others whose names I do not remember, to James W. Green, empowering him to attend to some business for them in Missouri, which paper I returned to Mr. Green, at his office in this place; when I returned it, I found Mr. Abraham Curtis executing a new power, to take the place of the one lost; Mr. Green called on me to witness Mr. Curtis' signature, which I did; Mr. Curtis was talking to Mr. Green, during my stay in the office, about this Missouri business, & expressed the opinion openly before me that they had been badly treated by the administrator in Missouri, & he did not believe they had received fair treatment. I think he mentioned the administrator's name, Mr. Hook.

352 2nd question by same. Did he state how he got information, & from whom, which led him to think he had been badly treated?

Answer. I do not remember that he did.

3rd question by same. Was anything said about who was to carry on this suit; at whose expense, & what proportion of said estate James W. Green, the attorney created by this power, was to get?

Answer. I have no recollection of it.

And further the deponent sayeth not.

JEREMIAH MORTON, JR.

And the Exhibit No. "1" referred to in the foregoing deposition of said Morton is in the words and figures following, to wit:

Exhibit No. 1 *to deposition of J. Morton, Jr.*

Know all men by these presents, that we the undersigned, some of the heirs-at-law and distributees of the estate of the late Fielding Curtis, deceased, of the State of Missouri, do hereby constitute and appoint James W. Green, of the county of Culpepper, and State of Virginia, our true and lawful attorney, for us and in our names, to collect and receive from the personal representative of the said Fielding Curtis, deceased, whatever sums of money or property that may be coming to us respectively, from the estate of the said Fielding Curtis, and to give receipts therefor; and we further authorise and empower our said atttorney to employ, on such terms as he may deem best, counsel in the State

353 of Missouri, to prosecute such suit or suits as may be necessary to

recover the same, hereby ratifying and confirming whatsoever our said attorney may lawfully do in the premises.

Witness our hands and seals this 1st day of April, 1866.

A. CURTIS. [SEAL.]
H. B. CURTIS. [SEAL.]

Witness as to A. Curtis & H. B. Curtis—
JEREMIAH MORTON, JR.

MARY GUINN. [SEAL.]
SUSAN CURTIS. [SEAL.]

Witness as to Mary Guinn and Susan Curtis—
LELAND COLLINS.

MATILDA COLLINS. [SEAL.]
ABIAH GUINN. [SEAL.]
TANDY W. GUINN. [SEAL.]

Witness as to Matilda Collins, Abiah Guinn, and Tandy W. Guinn—
V. B. COLLINS.

F. M. LATHAM, [SEAL.]
Adm'r of Jno. J. Curtis, dec'd.

Witness as to F. M. Latham, adm'r of J. Curtis, dec'd—
JOHN W. MYERS.

A. C. CURTIS. [SEAL.]

Witness as to A. C. Curtis—
JOHN C. GRAYSON.

Deposition of Peter J. Norris.

Deposition of Peter J. Norris, taken before James B. Dey, notary public, at Culpepper Court-House, Virginia, on the 8th & 9th days of March, A. D. 1870.

1st question by Jas. W. Green, counsel for the plaintiffs & appearers. What is your age & residence?

Answer. Upwards of forty (40) years; residence Culpepper C. H., Va.

2d question by same. Are you married or single; if married, whom & when did you marry?

354 Answer. I am married; was married in the year 1855; married a daughter of Mrs. Mary Guinn.

3d question by same. Was your wife's grandfather or grandmother, great-grandfather or great-grandmother living in 1860, or had they all died before that time?

Answer. They died many years previous to that time.

4th question by same. Did you know Abiah Guinn & Tandy W. Guinn; if yea, state what relation they are to each other?

Answer. I do; they are brothers.

5th question by same. Do you know any other brothers & sisters of Abiah Guinn; if so, give their names & state which were living in 1860?

Answer. I do; Milton Guinn, Matilda Collins, widow of James Collins, Elizabeth Hill, wife of Wesley Hill; I knew Henderson Guinn, who died before 1860; he left a family in Tennessee; Farish or Phares Guinn, who died in 1863, & was never married; I have corresponded with Alfred Guinn since the war, & know that he is now living.

6th question by same. Whose children were the parties you have named?

Answer. Children of Elizabeth Guinn; their father died before my recollection.

355 7th question by same. State all you know, if anything, about Zadok Hook, as administrator of Fielding Curtis, paying to Tandy W. Guinn, Matilda Collins, Abraham C. Curtis, Henry B. Curtis, Elizabeth Hill, wife of Wesley Hill, & Abiah Guinn money as distributees of the estate of the late Fielding Curtis?

Answer. Mr. Hook requested me to see the parties & see if they were willing to settle on the same terms that the full legatees had. I went to see them, & they agreed to do so. Mr. Hook paid over the money to me to pay them. Their proportions were the same as the full legatees had received, viz: five thousand ($5,000) dollars each.

8th question by same. Did Mr. Hook at any time show you any statement or account showing the value or the losses of the estate of Fielding Curtis?

Answer. He did not.

9th question by same. Did you show any statement or account to the above-named parties, whom Mr. Hook requested you to see, showing the value or the losses of the estate of Fielding Curtis?

Answer. I did not.

10th question by same. What did Mr. Hook say to you about the value of a full legatee's share in the estate of Fielding Curtis?

Answer. Mr. Hook said that, as near as he could approximate, there would be thirty-eight hundred ($3,800) dollars coming to each full
356 legatee. He also remarked that the estate was not settled up fully. He also stated the estate had suffered heavy losses from the effects of the war, & he had sustained considerable individual loss in the management of the estate, & was anxious to get the business off his hands; that he wished that he had never heard of it.

11th question by same. If the share of each full legatee was only $3,800, as represented by Mr. Hook, why did he settle with the parties above-named, through you, at $5,000 as the share of each full legatee?

Answer. It was by a proposition made to him by Mr. Payne and myself; the parties, thinking the estate was worth more, refused to settle at Mr. Hook's proposition in his statement; but if he would pay them the sum of $5,000 each, they would give him a refunding bond for $1,200 in case he did not realize out of the estate the amount back again.

12th question by same. When you settled with the parties above-named, Tandy W. Guinn & others, did you or not tell them that Mr. Hook said to you about the value & losses of the estate of Fielding Curtis?

(To this question and the answer the defendant, Hook, through his counsel, excepts, on the ground that the witness, Norris, was him-
357 self an heir & the agent & adviser of other heirs, and was in no sense an agent authorized by Mr. Hook to make any statement of the condition of the estate.)

Answer. I don't recollect that I did. Mr. Hook requested me to see the parties & see if they would settle on the same terms the other legatees had, which I did, and they consented to do so.

13th question by same. Look at the paper now shown you, marked "Exhibit No. 1," & signed by T. W. Guinn, Matilda Collins, Abraham C. Curtis, Henry B. Curtis, Elizabeth Hill, & Abiah Guinn, & to which your name is subscribed as an attesting witness, & state whether the parties executed the said paper in your presence?

Answer. They did.

14th question by same. Look at the signature of P. J. Norris, subscribed as an attesting witness to said paper, & say whether the said signature is in your handwriting.

Answer. It is.

15th question by same. Was the said paper, marked "Exhibit No. 1," ever in your possession?

Answer. It was.

16th question by same. State how it first came into your possession, and when.

Answer. It was given to me by Mr. Hook for the parties to sign in 1865.

17th question by same. After the said paper was executed into
358 whose possession did it go?

Answer. I held it.

18th question by same. Did you at any time hand the said paper to Mr. Hook?

Answer. I did, when he was here last.

19th question by same. Do you know whether said paper went out of the possession of Mr. Hook? If aye, state when and all the circumstances connected with it.

Answer. I do; when Mr. Hook was here last, at the taking of the depositions in James W. Green's office, I was called upon for the paper. It was then in the possession of Mr. Hook, who produced it & handed it to Ja's W. Green. It had been handed by me to Mr. Hook the evening before.

20th question by same. At the time the said paper was handed by Mr. Hook to Mr. Green, did Mr. Hook say anything about to whom the paper belonged?

(The defendant, Hook, by his counsel, excepts to this question & answer as a leading question.)

Answer. Mr. Hook said it was my paper—I mean witness paper—it never having been delivered to him—Mr. Hook—except to look at on the evening before. I had handed it to Mr. Hook the evening before to look at. This was last September, when the depositions in this
359 case were taken in this town.

21st question by same. Before you paid the money to them, had, so far as you know, Tandy W. Guinn, Matilda Collins, Abram C. Curtis, Henry B. Curtis, Elizabeth Hill, Wesley Hill, & Abiah Guinn, or any of them, ever seen Mr. Hook?

Answer. I don't think they had ever seen Mr. Hook.

22d question by same. When—in what year—did Abraham Curtis die?

Answer. I do not remember the exact date, but think it was in 1866.

Cross-examination:

1st question, by T. T. Hill & Eustace Gibson, counsel for the defendants. You say Mr. Hook made no statement of the value or losses of the estate of Fielding Curtis, deceased, to you or the other heirs; do you not know that Mr. Hook wrote a letter to Abraham Curtis, in which there was a full statement of the value of the estate made in March, 1861?

Answer. I don't recollect the exact date of the letter, but know there was such a letter written previous to the war by Mr. Hook, stating the supposed value of the estate at upwards of $60,000; & Abraham Curtis was about to employ Thomas O. Flint, who was clerk of the
360 circuit court here at that time, to look after the estate. The war soon afterwards broke out & prevented his going.

2d question by same. Was the $60,000 and upwards all the property given in the statement contained in that letter?

Answer. Because I did not at the moment, but upon refreshing my memory I did.

17th question by same. At the interview at Mrs. Payne's who stated that Mr. Hook had written a letter to Abraham Curtis in 1861, showing that the inventory of the estate of Fielding Curtis showed that his estate was worth sixty-odd thousand dollars besides slaves?

Answer. John J. Payne referred to the letter that his Uncle Abraham Curtis had received from Mr. Hook, showing the estate was worth upwards of sixty thousand ($60,000) dollars previous to the war; but I do not recollect any statement he made in regard to the slaves at that time.

366 18th question by same. Were you also informed of the contents of that letter, & did you or others refer to it in that inteview?

Answer. I had information from Abraham Curtis that he had received a letter, as I stated before, from Mr. Hook, stating the estate was worth upwards of sixty thousand ($60,000) dollars previous to the war, and I referred to what I had heard concerning that letter at the time, which was admitted by Mr. Hook in the presence of all the parties present.

19th question by same. Was all this stated & admitted before the contract was made between Mr. Hook & any of the distributees of Fielding Curtis?

Answer. It was.

20th question by same. You have stated that you were present at the interview between Mr. Hook, Mrs. Payne, Mrs. Curtis & Mrs. Guinn; state whether or not you were so present as the business friend & adviser of these ladies?

Answer. I was there to represent Mrs. Mary Guinn, by her request.

21st question by same. You state that the proposition to pay $5,000 came from yourself & Mr. Payne; was that proposition acceded to by Mr. Hook & agreed to by these ladies?

Answer. Mr. Hook refused to do so at first; upon their agreeing to give him a refunding bond, he consented.

367 22d question by same. Look at those papers marked "Exhibit D," "Exhibit E," "Exhibit F," "Exhibit G," & "Exhibit H," & to all of which your name is attached as attesting witness, & say whether or not they are the genuine papers signed & delivered by the parties whose names are thereto attached?

Answer. They are.

23d question by same. Say whether or not you were empowered by the parties thereto to settle in accordance therewith with Mr. Hook, & whether you did not receive from him the sums of money therein mentioned & pay it over to the parties entitled thereby?

Answer. I had no power of attorney except from Alfred Guinn, who lives in Tennessee; the other parties signed the other papers in my presence—at my counting-room in this place; upon their signing the papers, or soon thereafter, I paid them the money for Mr. Hook.

24th question by same. I did not ask you anything about the signing of these papers; I asked you if those heirs did not authorize you to receive the sums of money mentioned in the papers. Can't you answer that question?

Answer. They agreed that I should receive it & pay it over to them, which I did.

25th question by same. Mr. Norris, you say they "agreed" that you should receive this money; now, were you not really their paid

368 agent in these transactions?

Answer. There was nothing said about it that I know of be-

fore I received the money; upon settling with them they allowed me five per centum (5%.) I did not consider myself a special agent for either party. Mr. Hook said he was a long ways from home, & said that he would be glad if I would see these parties for him; that he had not time himself. I told him that I had no horse, & it would take time & expense to go & see the parties. He said he was willing to compensate me for my expense & trouble, which he did before I started.

26th question by same. You say there was nothing said about what you would charge these heirs before you undertook to collect the money; are you positive of that?

Answer. I am not certain of that.

27th question by same. Don't you know that you told some of the heirs that you would charge them five per centum (5%) for attending to it before you undertook it?

Answer. I do not remember. This I recollect, that those who lived out of the State, I did write to them beforehand that I should charge them five per centum (5%.) I may have told the others the same, but do not recollect.

28th question by same. Then how is it you intended to charge
369 these parties & collect their money, if you did not consider yourself their agent?

Answer. I did not consider myself their agent, as I was not called upon by them; there was no understanding to that effect, no instrument of writing drawn to that effect.

29th question by same. Then what right, moral or legal, had you to collect the money belonging to these relations of yours, & to charge them the sum of five per centum (5%) therefor, when you say that you had already been paid by Mr. Hook?

The plaintiffs and appearers, by counsel, except to this question, because the witness is called to testify in regard to facts, & not to discuss moral, legal, or metaphysical questions.

Answer. It was understood after seeing them for Mr. Hook that I should receive their money, & I considered that I was entitled to compensation for my trouble for them. Mr. Hook only compensated me for the trouble I took for him.

30th question by same. How much did Mr. Hook pay you, & when?

Answer. Mr. Hook paid me one hundred ($100) dollars, I think it was in August, 1865.

31st question by same. You heard the testimony of Mr. Payne; was not this the one hundred ($100) dollars referred to by him?

Answer. It was not.

370 32d question by same. Did you get any part of the $100 paid to Mr. Payne?

Answer. That was between us.

33d question by same. Then do I understand you to say that you got one-half of Mr. Payne's $100, & kept the hundred paid yourself?

Answer. You understand it wrong.

34th question by same. Then what do you mean to say?

Answer. I mean to say as I stated in my previous deposition, that I received $100; I did not understand the previous question in regard to the $100 paid Payne; if paid to Payne, I know nothing about it. If Mr. Hook paid Payne any money, it was not in my presence.

35th question by same. Was Mr. Payne present when Mr. Hook paid you this $100, & was not a part of it for Payne, as well as yourself?

Answer. Mr. Payne was not present—no part of that was his.

36th question by same. Was it not understood between the parties

that by Mr. Hook getting the estate in his own right, that he could so manage it as to make something more of it than if he had been pressed to settle it at that time?

Answer. Mr. Hook remarked that he thought he could save himself by getting the estate into his hands; if pressed at the time,
371 that the real estate, if sold, would be at a sacrifice.

37th question by same. To what real estate do you refer to in the above answer?

Answer. The real estate upon which he had a lien as administrator of Fielding Curtis, or which he took in payment of debts due the estate of Fielding Curtis.

38th question by same. Did not Mr. Hook express himself willing to pay $5,000 to each full legatee, provided he could settle with all the heirs, so that he might settle up the estate as his own, & not subject to the law in such cases?

Answer. There was nothing said, that I know of, about the law governing such cases. Mr. Hook stated that his object was to save himself from any losses.

39th question by same. Did not Mr. Hook take upon himself the risk of all losses to the estate in the way of bad debts?

Answer. I suppose he did.

40th question by same. Did Mr. Hook authorize you to make any statements whatever in regard to the value of the estate; if aye, what are they?

Answer. Mr. Hook was present, & made the statement for himself to the full legatees present. I knew nothing about the value of the estate at that time myself, only from what Mr. Hook said.

372 41st question by same. Have you any reason to believe that Mr. Hook misrepresented or concealed from you & the other heirs of Fielding Curtis the full value of the estate?

Answer. I supposed Mr. Hook's statement to be true, as it was impossible for me to know anything to the contrary. I know nothing now to the contrary.

42d question by same. Did you hear Mr. Hook say, or not, that he had paid the two (2) legatees in Missouri their full share of the estate?

Answer. I do not know that Mr. Hook stated anything about it at that time. He did state that he had settled with two (2) of the heirs in Missouri, & paid them more than the heirs in Virginia; & gave as his reason that he paid them in bonds or notes, they not requiring to pay all in money. The precise amount that he paid them I do not recollect. And further the deponent sayeth not.

PETER J. NORRIS.

And the Exhibit No. 1 referred to in the foregoing deposition of Peter J. Norris is in the words and figures following, to wit:

Exhibit No. 1 *to deposition of P. J. Norris.*

Whereas Zadok Hook, of the county of Callaway, in the State of Missouri, became, and is now, the lawful and acting administrator of the estate of Fielding Curtis, who departed this life at the county and State last aforesaid on the —— day of February, 1861, intestate;
373 and whereas, further, said Hook has ascertained that there now remains in his hands as adm'r as aforesaid, and subject to distribution, of good and undoubted notes and money, the sum of thirty-eight hundred dollars to each direct heir of said estate, the number of

direct heirs of the same being eight, by name as follows, to wit: Mary Guinn, Anne Payne, Susan Curtis, Sally Wilhite, William Curtis, Elijah Curtis, and Abraham Curtis, & Betsy Guinn, who were brothers and sisters of the said Fielding Curtis, deceased, the following of which said brothers and sisters are now deceased, to wit: Betsy Guinn, Elijah Curtis, William Curtis, and Sallie Wilhite, leaving their children & their descendants as heirs at law and distributees of said Fielding Curtis's estate; and whereas the said Hook, adm'r, &c., has paid to the direct heirs of said estate now living, in full of their distributive share in said estate, the sum of five thousand dollars each, which said payment of 5,000$ is $1,200 00 to each of said direct heirs, over and above the amount of money and good notes now in the hands of said administrator belonging to said estate; and whereas, further, we, the undersigned, children of the deceased brothers and sisters of the said Fielding Curtis, dec'd, by name as aforesaid, to wit: William Curtis, Betsy Guinn, Sally Wilhite, & Elijah Curtis, and as said children, nephews of the said
374 Fielding Curtis, dec'd, and heirs of his estate, have this day been paid by the said Hook our pro rata shares in said estate, estimating the same at a standard of 5,000$ to each brother & sister or direct heir of the said Fielding Curtis, deceased, or their heirs, which said standard of 5,000$ is, as aforesaid, 1,200$ over and above the amount of money now in the hands of said administrator subject to distribution: Now, therefore, in order to save the said Hook harmless and free from loss in the payment proportionately to us of the said sum of 1,200$ as heirs of the said William Curtis, Betsy Guinn, Elijah Curtis, & Sallie Wilhite, dec'd brothers & sisters of the said Fielding, as aforesaid, we do hereby each severally bind & obligate ourselves to refund to the said Hook *an* proportionate part of the sum of 1,200$ upon the direct share as aforesaid paid to us as aforesaid, provided the said Hook shall fail to collect said sum of $1,200 00 out of the uncollected notes & evidences of debt due said estate within five years from this date; it being understood that this obligation is to be construed as several in its operation; that is to say, we and each of us are only bound to refund the proportionate part of the excess sum of 1,200$ actually received by us, and are in no wise bound for the failure of any other signer of this obligation to refund his proportionate share of the same should
375 be required; and it is further understood that from & after five years from this date this obligation is to cease & become void.

T. W. GUINN.
her
MATILDA + COLLINS.
mark.
ABRAM C. CURTIS.
HENRY B. CURTIS.
ELIZABETH HILL.
his
ABIAH + GUINN.
mark.

Teste:
P. J. NORRIS.
LELAND COLLINS.
THO'S R. RIXEY.
GEO. E. MARSHALL.

And the Exhibit "D" referred to in the foregoing deposition of Peter J. Norris is in the words and figures following, to wit:

Exhibit "D" to said depos'n of Norris.

For and in consideration of the sum of seven hundred and fourteen and $\frac{25}{100}$ dollars, to me, the undersigned Milton Guinn, of the county of Harrison, in the State of Virginia, in hand paid by Zadok Hook, of the county of Callaway, and State of Missouri, the receipt of which I do hereby acknowledge, I, the said Milton Guinn, do hereby sell, transfer, assign and set over to the said Zadok Hook, all my right, title, interest, and claim, in and to all sums of money, personal effects, and choses in action to which I am or may be entitled as heir at law and distributee of the estate of Fielding Curtis, late of the county of Callaway, in the State of Missouri, I being a son of Betsy Guinn, formerly Betsy Curtis,
(now deceased,) and a sister of Fielding Curtis, dec'd; and as such
376 interested in said estate. And in consideration of the premises,
I do further hereby release, absolve, and acquit Zadok Hook, of the said county of Callaway, and State of Missouri, from all liability or indebtedness to me as heir as aforesaid, by virtue of his office and trust as administrator of said estate; this instrument of writing being intended as a full and final settlement between us. Given under my hand and seal this 23d day of May, 1866.

MILTON GUINN. [SEAL.]

(Teste: P. J. NORRIS.)

[50c. U. S. rev. stamp.]

And the Exhibit "E" referred to in said deposition of Peter J. Norris is in the words and figures following, to-wit:

Exhibit "E" to deposition of Norris.

For and in consideration of the sum of twelve hundred and fifty dollars, to me, the undersigned Benjamin W. Curtis, of the county of Montgomery, in the State of Virginia, in hand paid by Zadok Hook, of the county of Callaway, & State of Missouri, the receipt of which I do hereby acknowledge, I, the said Benjamin W. Curtis, do hereby sell, transfer, assign, and set over to the said Zadok Hook, all my right, title, interest, and claim, in and to all sums of money, personal effects and choses in action to which I am or may be entitled as heir at law and distributee of the estate of Fielding Curtis, late of the county of
377 Callaway, in the State of Missouri, I being a son of Elijah Curtis,
(now deceased,) who was a brother of the said Fielding Curtis, dec'd, and as such interested in said estate. And in consideration of the premises, I do further hereby release, absolve, and acquit Zadok Hook, of the said county of Callaway, and State of Missouri, from all liability or indebtedness to me as heir as aforesaid, by virtue of his office and trust as administrator of said estate; this instrument of writing being intended as a full and final settlement between us. Given under my hand and seal this 16th day of October, 1865.

B. W. CURTIS. [SEAL.]

Teste: P. J. NORRIS.
G. A. WEEDON.

[65c. U. S. rev. stamps.]

And the Exhibit "F," referred to in said deposition of Peter J. Norris, is in the words and figures following, to wit:

Exhibit "F" to deposition of Norris.

For and in consideration of the sum of seven hundred & fourteen

dollars and twenty-eight cents to each of us, the undersigned Abiah Guinn & Elizabeth Hill, formerly Elizabeth Guinn, of the county of Orange, and Tandy W. Guinn, and Matilda Collins, formerly Matilda Guinn, of the county of Culpepper, & State of Virginia, in hand paid by Zadok Hook, of the county of Callaway, and State of Missouri, the receipt of which we do hereby acknowledge, we, the said Abiah Guinn, Elizabeth Hill, Tandy W. Guinn, and Matilda Collins, do hereby
378 sell, transfer, assign, and set over to the said Hook, all our right, title, interest, and claim, in and to all sums of money, personal effects, and choses in action, to which we and each of us are or may be entitled as heirs at law and distributees of the estate of Fielding Curtis, late of the county of Callaway, & State of Missouri, we, and each of us, being children of Betsy Guinn, now deceased, formerly Betsy Curtis, and sister of Fielding Curtis, deceased, and as such interested in said estate; and, in consideration of the premises, we do further hereby release, absolve, and acquit Zadok Hook, of the said county of Callaway, & State of Missouri, from all liability or indebtedness to us as heirs as aforesaid, by virtue of his office and trust as administrator of said estate; this instrument being intended as a full & final settlement between us. Given under our hands & seals this 16th day of July, 1865.

TANDY W. GUINN. [SEAL.]

his
ABIAH + GUINN. [SEAL.]
mark.

her
MATILDA + COLLINS. [SEAL.]
mark.

her
ELIZABETH + HILL. [SEAL.]
mark.

Attest:
P. J. NORRIS.
LELAND COLLINS.
G. E. MARSHALL.

[$1 50c. U. S. rev. stamps.]

I, Wesley Hill, do by these presents certify and confirm the transfer made by my wife, Elizabeth Hill, to Zadok Hook, of Callaway County, Missouri, of all her right, title, and interest in and to the estate of Fielding Curtis, deceased, late of Callaway County, Missouri, as set
379 forth in the instrument of writing to which this is attached, and of which this is to form a part. Given under my hand and seal this 29 day of August, 1865.

WESLEY HILL. [SEAL.]

And the Exhibit "G," referred to in said deposition of Peter J. Norris, is in the words and figures following, to wit:

Exhibit "G" to deposition of Norris.

$714 28.] CULPEPPER COURT-HOUSE, VA., *August 11th*, 1868.

Received of Zadok Hook, of the county of Callaway, in the State of Missouri, administrator of the estate of Fielding Curtis, dec'd, late of the said county and State, seven hundred and fourteen and $\frac{28}{100}$ dollars in payment of my distributive share in and to the estate of the said

Fielding Curtis, I being a son of Betsy Guinn, (now deceased,) who was a sister of Fielding Curtis, deceased, and as such interested in said estate.

ALFRED GUINN,
By P. J. NORRIS,
His Attorney.

[2c. U. S. rev. stamp.]

And at the Exhibit "H," referred to in said deposition of Peter J. Norris, is in the words and figures following, to wit:

Exhibit H.

For and in consideration of the sum of twelve hundred and fifty dollars to each of us, the undersigned Benjamin W. Curtis, of Christiansburg, Va., Abraham C. Curtis, of Madison County, Va., and Henry B. Curtis,
380 of Forquier County, State of Virginia, in hand paid by Zadok Hook, of the county of Callaway, & State of Missouri, the receipt of which we do hereby acknowledge, we, the said Benj. W. Curtis, Abraham C. Curtis, and Henry B. Curtis, do hereby sell, transfer, assign, and set over to the said Hook, all our right, title, interest, and claim, in and to all sums of money, personal effects & choses in action, to which we and each of us are or may be entitled as heirs at law, and as distributees of the estate of Fielding Curtis, late of the county of Callaway, and State of Missouri, we, and each of us, being sons of Elijah Curtis, (now deceased,) who was a brother of Fielding Curtis, deceased, and as such interested in his said estate; and in consideration of the premises we do further hereby release, absolve, and acquit Zadok Hook, of the county of Callaway, & State of Missouri, from all liability or indebtedness to us as heirs as aforesaid, by virtue of his office and trust as the administrator of said estate; this instrument being intended as a full and final settlement between us. Given under our hands & seals this 16th day of July, A. D. 1865.

ABRAM C. CURTIS. [SEAL.]
HENRY B. CURTIS. [SEAL.]

Attest:
P. J. NORRIS.
THO'S R. RIXEY.
[$1 25 U. S. rev. stamps.]

Deposition of Fayette M. Latham.

381 Deposition of Fayette M. Latham, taken before James B. Dey, notary public, at Culpepper Court-House, Virginia, on the 9th day of March, A. D. 1870.

1st question by James W. Green, counsel for the plaintiffs & appearers. What is your age, & where do you reside?

Answer. I reside at Culpepper C. H., Va. Age 43 years.

2nd question by same. What business relation, if any, do you occupy towards the estate of the late John J. Curtis?

Answer. I am the Virginia administrator of John J. Curtis.

3d question by same. Did the defendant Zadok Hook, as administrator of Fielding Curtis, at any time, pay you as said administrator of John J. Curtis, any money, if aye, how much & when; state all the circumstances connected with such payment, & what Mr. Hook said, if anything, in regard to the amount coming to the estate of John J. Curtis from the estate of Fielding Curtis?

Answer. Mr. Hook did pay me $1,250, about the 10th of February, 1866, which amount he stated was coming to the estate of John J. Curtis from the estate of Fielding Curtis. When he came to my office to pay the money, he had a receipt already written; I made some objection to the phraseology of the receipt, but he insisting on having it
382 in that shape, I signed the same, believing that it made no difference; that if that sum was not the full amount due the estate of John J. Curtis, could recover the residue; I saw no statement about the assetts of Fielding Curtis, nor did I know anything about them myself. The money was paid by check, which check was paid. I made some little addition to my receipt in regard to the check.

4th question by same. Did Mr. Hook at any time show you any statement or account showing the value or losses of the estate of Fielding Curtis, or of the interest of the estate of John J. Curtis therein?

Answer. I have no recollection of his doing so.

Cross-examination:

1st question by T. T. Hill & Eustace Gibson, counsel for the defendants. Did you demand of Mr. Hook any statement of the value or losses of the estate?

Answer. I do not recollect that I did; I received what he offered to pay me.

3d question by same. Had you any information from either of the heirs of the estate of its value?

Answer. I had not; I had heard from the widow of John J. Curtis, & I think from Mr. Hook, that that amount had been paid to the other children of Elijah Curtis.

3d question by same. Did you not write to Mr. Hook, request-
383 ing him to send the amount due your intestate?

Answer. I did write to Mr. Hook in regard to the interest of John J. Curtis in the estate; I do not recollect the exact contents of that letter. This, I think, was prior to the payment of the money.

4th question by same. Look at the paper now shown you, marked "Exhibit A," & say whether it is the receipt given by you to Mr. Hook?

Answer. It is.

5th question by same. Did you hear of any money being paid the widow of John J. Curtis or to her order?

Answer. I heard from the widow of John J. Curtis that Mr. Hook had paid John W. Ashby the sum of $1,250 some time in the year 1865; that Mr. Ashby stated that he intended to qualify as administrator of John J. Curtis; Ashby never did qualify as administrator, but I did, in the fall of 1865, at the request of Mrs. Curtis. Mrs. John J. Curtis told me that Mr. Ashby paid her seventy-five ($75) dollars of the amount received from Hook, which $75 was paid afterwards to Mr. Hook by Mrs. Curtis by an order on the administrator of John Brown, her father, which order was transferred to Peter J. Norris by Mr. Hook, & was paid to Mr. Norris by me for the estate of John Brown.

And further the deponent saith not.

F. M. LATHAM.

384 And the Exhibit "A" referred to in the foregoing deposition of F. M. Latham is in the words and figures following, to wit:

Exhibit "A" to deposition of F. M. Latham.

CULPEPPER COURT-HOUSE, VA., *February* 10*th*, 1866.

I, the undersigned, F. M. Latham, of the county of Culpepper, and

State of Virginia, administrator of the estate of John J. Curtis, deceased, of said county and State, have this day received of Zadok Hook, of the county of Callaway, & State of Missouri, administrator of the estate of Fielding Curtis, late of the county & State last aforesaid, the sum of twelve hundred and fifty dollars in full of the distributive share of the said John J. Curtis, deceased, who was an heir and distributee of the estate of the said Fielding Curtis, deceased; the said John J. Curtis being a son of Elijah Curtis, deceased, who was a brother of the said Fielding Curtis, dec'd, and as such entitled to an interest in said estate. The said sum of twelve hundred & fifty dollars is in check of said Hook on Allen, Copp & Nisbet, which when paid is to be applied to the credit as above.

F. M. LATHAM,
Adm'r of Jno. J. Curtis, dec'd.

[2c U. S. rev. stamp.]

CULPEPPER C. H., VA., *Feb. 10th*, 1866.

ALLEN, COPP & NISBET,
Bankers, St. Louis, Mo.

Pay to F. M. Latham or order, twelve hundred and fifty dollars in United States Treasury notes. $1,250 00.

ZADOK HOOK.

[2c. U. S. rev. stamp.]

385 And endorsed on said exhibit are the words and figures following, to wit:

Endorsement on last exhibit.

Pay order C. R. Hooff, cash'r First National B'k Alex'a, for my credit.
F. M. LATHAM.

Pay Peter Weiss, esq., or order.

CHA'S R. HOOFF, *Cr.*
Pnersf Eny.

Deposition of Thos. R. Rixey.

Deposition of Thomas R. Rixey, taken before James B. Dey, notary public at Culpepper Court-House, Virginia, on the 10th day of March, A. D. 1870.

1st question by James W. Green, counsel for the plaintiffs & appearers. Look at the paper now shown you, marked "Exhibit No. 1," and to which your name is subscribed as attesting witness, and state whether the parties, whose names are signed thereto, signed or acknowledged the same in your presence, & whether the signature Thos. R. Rixey, subscribed thereto as attesting witness, is in your handwriting.

Answer. The signature, Thos. R. Rixey, is in my own handwriting, but I do not recollect any of the circumstances; I am not in the habit of signing my name unless some of the parties are present & acknowledge their signatures.

2d question by same. What is your age and residence?

Answer. I am in my 53rd year since the 1st day of March, 1870;
386 residence, Culpepper County, Va., near Culpepper Court-House, Va.; and further the deponent saith not.

THOS. R. RIXEY.

(The Exhibit No. 1 referred to in this deposition is the same which is copied on page 372 to deposition of Peter J. Norris.)

Deposition of George E. Marshall.

Deposition of George E. Marshall, taken before James B. Dey, notary public, at Culpepper Court-House, Virginia, on the 10th day of March, A. D. 1870.

1st question by James W. Green, counsel for the plaintiffs and appearers. Where do you reside; what is your age; where were you raised; are you married or single; if married, whom and when did you marry?

Answer. Two & a half (2½) miles south of this place; in my 54th year; married Martha Guinn, daughter of Mrs. Mary Guinn, in March, 1843; I was raised in this county near where I now live—south of this place about 3 miles.

2d question by same. Was the grandfather or grandmother or great-grandfather or great-grandmother of your wife living in 1860, or had they all died before that time?

Answer. None were living; all had died before that time.

387 3d question by same. State if you have ever known Elizabeth Guinn; if aye, is she living or dead; if dead, when & where did she die?

Answer. I knew her; she is dead; she died, I think, about 1853, in about one-half (½) mile from my house.

4th question by same. State if said Elizabeth Guinn was married; if aye, who was her husband, & is he living or not; if dead, when & where did he die?

Answer. She was married; her husband was Abiah Guinn, who is dead; I think he died about the year 1835, in about one-half mile of my house.

5th question by same. Do you know if said Elizabeth Guinn had children? if aye, give their names & who of them have died & when & what descendants they left, if any. If said Elizabeth Guinn had a daughter or daughters, did they or any of them marry? if aye, name the husband or husbands, & whether any of said daughters is now wife or widow.

Answer. She had; their names were Henderson Guinn, Milton Guinn, Abiah Guinn, Alfred Guinn, Phares Guinn, Tandy W. Guinn, Benjamin W. Guinn, Abraham Guinn, Matilda Collins, Elizabeth Hill, wife of Wesley Hill, & there were three (3) others who died in infancy, whose names I do not remember; these last three died before they were ten (10) years old. I knew all of them who lived to be over ten (10)

388 years of age. Henderson Guinn died in Tennessee before his mother; he left several children; I only recollect the name of one, John Guinn. Phares Guinn died in 1864, & left no children, he never having been married. Benjamin W. Guinn died before his mother, & was never married; Abraham Guinn died before his mother & never was married; Matilda Collins, who was Matilda Guinn, married James Collins, and is now a widow; Elizabeth Hill, who was Elizabeth Guinn, & married Wesley Hill, is now the wife of said Wesley Hill.

6th question by same. Where does Tandy W. Guinn now reside; have you seen him in the last few days? if aye, state when & what is his present condition of health.

Answer. About 2¼ miles south of this place; I saw him this morning; his health is bad; has been confined to his bed for the last week with pneumonia.

7th question by same. Look at the paper now shown you, marked "Exhibit No. 1," & to which your name is subscribed as an attesting

State of Virginia, administrator of the estate of John J. Curtis, deceased, of said county and State, have this day received of Zadok Hook, of the county of Callaway, & State of Missouri, administrator of the estate of Fielding Curtis, late of the county & State last aforesaid, the sum of twelve hundred and fifty dollars in full of the distributive share of the said John J. Curtis, deceased, who was an heir and distributee of the estate of the said Fieiding Curtis, deceased; the said John J. Curtis being a son of Elijah Curtis, deceased, who was a brother of the said Fielding Curtis, dec'd, and as such entitled to an interest in said estate. The said sum of twelve hundred & fifty dollars is in check of said Hook on Allen, Copp & Nisbet, which when paid is to be applied to the credit as above.

F. M. LATHAM,
Adm'r of Jno. J. Curtis, dec'd.

[2c U. S. rev. stamp.]

CULPEPPER C. H., VA., *Feb. 10th*, 1866.

ALLEN, COPP & NISBET,
Bankers, St. Louis, Mo.

Pay to F. M. Latham or order, twelve hundred and fifty dollars in United States Treasury notes. $1,250 00.

ZADOK HOOK.

[2c. U. S. rev. stamp.]

385 And endorsed on said exhibit are the words and figures following, to wit:

Endorsement on last exhibit.

Pay order C. R. Hooff, cash'r First National B'k Alex'a, for my credit.
F. M. LATHAM.

Pay Peter Weiss, esq., or order.

CHA'S R. HOOFF, *Cr.*
Pnersf Eny.

Deposition of Thos. R. Rixey.

Deposition of Thomas R. Rixey, taken before James B. Dey, notary public at Culpepper Court-House, Virginia, on the 10th day of March, A. D. 1870.

1st question by James W. Green, counsel for the plaintiffs & appearers. Look at the paper now shown you, marked "Exhibit No. 1," and to which your name is subscribed as attesting witness, and state whether the parties, whose names are signed thereto, signed or acknowledged the same in your presence, & whether the signature Thos. R. Rixey, subscribed thereto as attesting witness, is in your handwriting.

Answer. The signature, Thos. R. Rixey, is in my own handwriting, but I do not recollect any of the circumstances; I am not in the habit of signing my name unless some of the parties are present & acknowledge their signatures.

2d question by same. What is your age and residence?

Answer. I am in my 53rd year since the 1st day of March, 1870;
386 residence, Culpepper County, Va., near Culpepper Court-House, Va.; and further the deponent saith not.

THOS. R. RIXEY.

(The Exhibit No. 1 referred to in this deposition is the same which is copied on page 372 to deposition of Peter J. Norris.)

Deposition of George E. Marshall.

Deposition of George E. Marshall, taken before James B. Dey, notary public, at Culpepper Court-House, Virginia, on the 10th day of March, A. D. 1870.

1st question by James W. Green, counsel for the plaintiffs and appearers. Where do you reside; what is your age; where were you raised; are you married or single; if married, whom and when did you marry?

Answer. Two & a half (2½) miles south of this place; in my 54th year; married Martha Guinn, daughter of Mrs. Mary Guinn, in March, 1843; I was raised in this county near where I now live—south of this place about 3 miles.

2d question by same. Was the grandfather or grandmother or great-grandfather or great-grandmother of your wife living in 1860, or had they all died before that time?

Answer. None were living; all had died before that time.

387 3d question by same. State if you have ever known Elizabeth Guinn; if aye, is she living or dead; if dead, when & where did she die?

Answer. I knew her; she is dead; she died, I think, about 1853, in about one-half (½) mile from my house.

4th question by same. State if said Elizabeth Guinn was married; if aye, who was her husband, & is he living or not; if dead, when & where did he die?

Answer. She was married; her husband was Abiah Guinn, who is dead; I think he died about the year 1835, in about one-half mile of my house.

5th question by same. Do you know if said Elizabeth Guinn had children? if aye, give their names & who of them have died & when & what descendants they left, if any. If said Elizabeth Guinn had a daughter or daughters, did they or any of them marry? if aye, name the husband or husbands, & whether any of said daughters is now wife or widow.

Answer. She had; their names were Henderson Guinn, Milton Guinn, Abiah Guinn, Alfred Guinn, Phares Guinn, Tandy W. Guinn, Benjamin W. Guinn, Abraham Guinn, Matilda Collins, Elizabeth Hill, wife of Wesley Hill, & there were three (3) others who died in infancy, whose names I do not remember; these last three died before they were ten (10) years old. I knew all of them who lived to be over ten (10)

388 years of age. Henderson Guinn died in Tennessee before his mother; he left several children; I only recollect the name of one, John Guinn. Phares Guinn died in 1864, & left no children, he never having been married. Benjamin W. Guinn died before his mother, & was never married; Abraham Guinn died before his mother & never was married; Matilda Collins, who was Matilda Guinn, married James Collins, and is now a widow; Elizabeth Hill, who was Elizabeth Guinn, & married Wesley Hill, is now the wife of said Wesley Hill.

6th question by same. Where does Tandy W. Guinn now reside; have you seen him in the last few days? if aye, state when & what is his present condition of health.

Answer. About 2¼ miles south of this place; I saw him this morning; his health is bad; has been confined to his bed for the last week with pneumonia.

7th question by same. Look at the paper now shown you, marked "Exhibit No. 1," & to which your name is subscribed as an attesting

witness, & state whether any, and if any, which of the parties whose names are signed thereto signed or acknowledged the said paper in your presence, & whether the signature George E. Marshall subscribed thereto as attesting witness is in your handwriting?

Answer. The signature George E. Marshall subscribed thereto
389 as attesting witness is in my own handwriting. The cross marked (X) in Abiah Guinn's signature was made by me by authority from him, as he could not write; at that time he was living with me. My name was not intended to be a subscribing witness to any other signature.

8th question by same. Who had possession of the paper at the time you subscribed your name as attesting witness, & when did you do so?

Answer. Peter J. Norris; I subscribed it in the same year the confederate army surrendered; I think, in 1865. And further the deponent saith not.

GEORGE E. MARSHALL.

The Exhibit No. 1, referred to in this deposition, is the same which is copied on page 372, to deposition of Peter J. Norris.

Letters of administration, by Henry Gambs, on the estate of Phares Guinn, & proceedings thereon, marked X, No. 1.

The letters of administration taken by Henry Gambs, public administrator, of St. Louis County, Mo., on the estate of Phares Guinn, deceased, & proceedings thereon, marked "X, No. 1."

In the matter of the estate of Phares Guinn.

Copy of notice.—Filed July 14th, 1869.

To the Hon. Joseph P. Vastine, judge of the probate court of St. Louis County.

SIR: I have this day taken charge of the estate of Phares Guinn, deceased, for the purpose of administering the same.

Yours, respectfully,

HENRY GAMBS,
Public Administrator of St. Louis County.

SAINT LOUIS, *July 14th*, 1869.

390 *Copy of inventory.—Filed March 1st*, 1870.

Inventory of the real and personal estate of Phares Guinn, late of the county of St. Louis, deceased, describing the quantity, situation, and title of the real estate, the books and papers, debts due or to become due to the deceased, the names of the debtors, the date of the contract, the amount of interest due, and the rate of interest thereon, made by Henry Gambs, public administrator of St. Louis County, who administers upon, and has in charge the estate of said deceased.

ST. LOUIS, *February 26th*, 1870.

An interest in the estate of Fielding Curtis, deceased, the assets whereof are unknown to the administrator of Phares Guinn's estate, and is in litigation with Zadock, adm'r of said Fielding, and others.

We, the undersigned, witnesses appointed by the public administrator of said St. Louis County, to accompany and aid him in opening and

examining the papers and money of Phares Guinn, deceased, and in makin an inventory of them, did perform said duty, and hereby certify the above to be a full and complete inventory of the same.

THOS. GRACE.
RICHARD F. KOSTER.

STATE OF MISSOURI, *County of St. Louis, ss:*

Henry Gambs, public administrator of St. Louis County, who
391 administers upon the estate of Phares Guinn, deceased, being duly sworn, on his oath states that the foregoing inventory, by him made out, is a full inventory and description of all the money, goods, chattles, and estate, real and personal, books, papers, and evidences of and of title of the deceased, and of all debts due and becoming due so far as he can ascertain them; and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

HENRY GAMBS,
Public Administrator of St. Louis County, having in charge the estate aforesaid.

Sworn to and subscribed before me this 1st day of March, 1870.
[SEAL.] C. C. HARTMAN,
Not'y Public.

Copy of notice to creditors.—Filed March 2d, 1870.

Administrator's notice.

Notice is hereby given that the undersigned, public administrator of the county of St. Louis, has taken charge of the following estates, at the dates respectively mentioned, for the purpose of administering upon the same, to wit:

Estate of	Abraham Curtis,	dec'd, July 14th, 1869.
"	Phares Guinn,	" " 14th, "
"	John J. Curtis,	" " 14th, "
"	Christian Schultz,	" " 26th, "
"	E. How Chapman,	" " 27th, "
"	Robert Evans,	" August 2d, "
"	Henry A. Starrett,	" " 4th, "
392 "	Joseph N. McDowell,	" with will annexed, August 7th, 1869.
"	Mary Bogue,	" August 10th, 1869.

All persons having claims against said estates are required to exhibit the same to the undersigned for allowance, within one year after the said dates respectively, and if such claims be not exhibited within two years from the date of this publication, they will be forever barred.

HENRY GAMBS,
Public Administrator, in charge of said estate.

STATE OF MISSOURI, *County of St. Louis, ss:*

Personally appeared before me, the undersigned, a notary public, within and for the county aforesaid, Arthur Olshausen, one of the publishers of the Westliche Post, of the State and county aforesaid, who being duly sworn, deposeth and saith that the annexed advertisement was published in the Westliche Post the time below specified, on the following days, and in the following numbers, viz: Aug. 12, 1869, No.

188; Aug. 19, 1869, No. 194; Aug. 26, 1869, No. 200; Sept. 2d, 1869, No. 206.

ARTHUR OLSHAUSEN.

Sworn to and subscribed before the undersigned, this 3d day of Sept., 1869.

[SEAL.]

HENRY GAMBS,
Notary Public St. Louis County, Mo.

Printer's fee, $3 00; affidavit, 50. Rec'd payment, $3 50.

393 STATE OF MISSOURI, *County of St. Louis, ss.*

I, William E. Wagner, clerk of the probate court of the county of St. Louis, do certify the foregoing to be a true and complete transcript of the records and papers on file in my office relating to the administration of the estate of Phares Guinn, deceased, and that the same were respectively filed therein on the days above designated.

In witness whereof I hereto set my hand and affix the seal of said court at office this 4th day of March, 1870.

[SEAL.]

W. E. WAGNER, *Clerk.*

Letters of adm's'n on the estate of Jno. J. Curtis, marked X, No. 2.

The letters of administration taken by Henry Gambs, public adm'r of St. Louis County, Mo., on the estate of John J. Curtis, dec'd, and proceedings thereon, marked "X, No. 2."

In the matter of the estate of John J. Curtis.

Copy of notice.—Filed July 14th, 1869.

To the Hon. Joseph P. Vastine, judge of the probate court of St. Louis County.

SIR: I have this day taken charge of the estate of John J. Curtis, deceased, for the purpose of administering the same.

Yours, respectfully,

HENRY GAMBS,
Public Administrator of St. Louis County.

SAINT LOUIS, *July 14th*, 1869.

Copy of inventory.—Filed March 1st, 1869.

Inventory of the real and personal estate of John J. Curtis, late of the county of St. Louis, deceased, describing the quantity, situa-
394 tion, and title of the real estate, the books and papers, debts due or to become due to the deceased, the names of the debtors, the date of the contract, the amount of interest due and the rate of interest thereon, made by Henry Gambs, public administrator of St. Louis County, who administers upon, and has in charge, the estate of said deceased.

ST. LOUIS, MO., *February 26th*, 1870.

An interest in the estate of Fielding Curtis, deceased, the assets whereof are unknown to the administrator of John J. Curtis' estate, and is in litigation with Zadock, adm'r of said Fielding and others.

We, the undersigned, witnesses appointed by the public administrator of St. Louis County to accompany and aid him in opening and examining the papers and money of John J. Curtis, deceased, and in making an inventory of them, did perform said duty, and hereby certify the above to be a full and complete inventory of the same.

THOS. GRACE.
RICHARD F. KOSTER.

STATE OF MISSOURI, *County of St. Louis, ss:*

Henry Gambs, public administrator of St. Louis County, who administers upon the estate of John J. Curtis, deceased, being duly sworn, on his oath states that the foregoing inventory, by him made out, is a full inventory and description of all the money, goods, chattels, and estate, real and personal, books, papers, and evidences of debt and of
395 title of the deceased, and of all debts due and becoming due, so far as he can ascertain them; and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

HENRY GAMBS,
Public Administrator of St. Louis County, having in charge the estate aforesaid.

Sworn and subscribed before me this 1st day of March, 1870.
[SEAL.] C. C. HARTMAN,
Not'y Public.

Copy of notice to creditors.—Filed March 2d, 1870.

Public administrator's notice.

Notice is hereby given that the undersigned, public administrator of the county of St. Louis, has taken charge of the following estates, at the dates respectively mentioned, for the purpose of administering upon the same, to wit:

Estate of	Abraham Curtis,	dec'd,	July 14th, 1869.
"	Phares Guinn,	"	" 14th, "
"	John J. Curtis,	"	" 14th, "
"	Christian Schultz,	"	" 26th, "
"	E. How Chapman,	"	" 27th, "
"	Robert Evans,	"	August 2d, 1869.
"	Henry A. Starrett,	"	" 4th, "
"	Joseph N. McDowell, 1869.	"	with will annexed; August 7th,
"	Mary Bogue,	"	August 10th, 1869.

All persons having claims against said estates are required to exhibit the same to the undersigned for allowance within one year after
396 the said dates respectively, and if such claims be not exhibited within two years from the date of this publication they will be forever barred.

HENRY GAMBS,
Public Administrator, in charge of said estate.

STATE OF MISSOURI, *County of St. Louis, ss:*

Personally appeared before me, the undersigned, a notary public within and for the county aforesaid, Arthur Olshausen, one of the publishers of the Westliche Post, of the State and county aforesaid, who being

duly sworn, deposeth and saith that the annexed advertisement was published in the Westliche Post the time below specified, on the following days and in the following numbers, viz: Aug. 12, 1869, No. 188; Aug. 19, 1869, No. 194; Aug. 26, 1869, No. 200; Sept. 2, 1869, No. 206.

ARTHUR OLSHAUSEN.

Sworn to & subscribed before the undersigned this 3d day of Sept., 1869.

[SEAL.] HENRY GAMBS,
Notary Public, St. Louis County, Mo.

Printer's fee, $3; affidavit, 50. Rec'd paym't, $3 50.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, William E. Wagner, clerk of the probate court of St. Louis County, do hereby certify the foregoing to be a true and complete transcript of the records and papers on file in my office relating to the administration of the estate of John J. Curtis, deceased, and that the same
397 were respectively filed therein on the days above designated.

In witness whereof I have hereto set my hand and affixed the seal of said court at office this 4th day of March, 1870.

[SEAL.] W. E. WAGNER, *Clerk.*

Letters of adm's'r'n on estate of Abraham Curtis & proceedings thereon marked X, No. 3.

The letters of administration taken by Henry Gambs, public adm'r of St. Louis County, Mo., on the estate of Abraham Curtis, dec'd, & proceedings thereon marked "X, No. 3."

In the matter of the estate of Abraham Curtis.

Copy of notice. Filed July 14th, 1870.

To the Hon. Joseph P. Vastine, judge of the probate court of St. Louis County.

SIR: I have this day taken charge of the estate of Abraham Curtis, deceased, for the purpose of administering the same.

Yours, respectfully,

HENRY GAMBS,
Public Administrator of St. Louis County.

SAINT LOUIS, *July* 14th, 1869.

Copy of inventory.—Filed March 1st, 1870.

Inventory of the real and personal estate of Abraham Curtis, late of the county of St. Louis, deceased, describing the quantity, situation, and title of the real estate, the books and papers, debts due or to become due to the deceased, the names of the debtors, the date of the contract, the amount of interest due, and the rate of interest thereon, made by Henry Gambs, public administrator of St. Louis County, who administers upon, and has in charge, the estate of said deceased.

ST. LOUIS, MO., *February 26th*, 1870.

398 An interest in the estate of Fielding Curtis, deceased, the assets whereof are unknown to the administrator of Abraham

Curtis' estate, and is in litigation with Zadock, adm'r of said Fielding and others.

We, the undersigned, witnesses appointed by the public administrator of St. Louis County, to accompany and aid him in opening and examining the papers and money of Abraham Curtis, deceased, and in making an inventory of them, did perform said duty, and hereby certify the above to be a full and complete inventory of the same.

THOS. GRACE.
RICHARD F. KOSTER.

STATE OF MISSOURI, *County of St. Louis, ss:*

Henry Gambs, public administrator of St. Louis County, who administers upon the estate of Abraham Curtis, deceased, being duly sworn, on his oath states that the foregoing inventory, by him made out, is a full inventory and description of all the money, goods, chattels, and estate, real and personal, books, papers, and evidences of debt and of title of the deceased, and of all debts due and becoming due, so far as he can ascertain them; and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

HENRY GAMBS,
Public Administrator of St. Louis County, having in charge the estate aforesaid.

Sworn to and subscribed before me this 1st day of March, 1870.
[SEAL.] C. C. HARTMAN,
Not'y Public.

399 *Copy of notice to creditors.—Filed March 2d, 1870.*

Administrator's notice.

Notice is hereby given that the undersigned, public administrator of the county of St. Louis, has taken charge of the following estates at the dates respectively mentioned, for the purpose of administering upon the same, to wit:

Estate of	Abraham Curtis,	dec'd,	July	14th, 1869.
"	Phares Guinn,	"	"	14th, "
"	John J. Curtis,	"	"	14th, "
"	Christian Schultz,	"	"	26th, "
"	E. How Chapman,	"	"	27th, "
"	Robert Evans,	"	August	2d, "
"	Henry A. Starrett,	"	"	4, "
"	Joseph M. McDowell, 1869.	"	with will annexed, August 7th,	
"	Mary Bogue,	"	August	10th, 1869.

All persons having claims against said estates are required to exhibit the same to the undersigned for allowance within one year after the said dates respectively, and if such claims be not exhibited within two years from the date of this publication, they will be forever barred.

HENRY GAMBS,
Public Administrator, in charge of said estate.

STATE OF MISSOURI, *County of St. Louis, ss:*

Personally appeared before me, the undersigned, a notary public,

within and for the county aforesaid, Arthur Olshausen, one of the
400 publishers of the Westliche Post, of the State and county aforesaid, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the Westliche Post, the time below specified, on the following days and in the following numbers, viz: Aug. 12, 1869, No. 188; Aug. 19, 1869, No. 194; Aug. 26, 1869, No. 200; Sept. 2, 1869, No. 206.

ARTHUR OLSHAUSEN.

Sworn to and subscribed before the undersigned this 3rd day of Sept., 1869.

[SEAL.] HENRY GAMBS,
Notary Public St. Louis County, Mo.

Printer's fee, $3 00; affidavit, 50c. Rec'd paym't, $3 50.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, William E. Wagner, clerk of the probate court of the county of St. Louis, do hereby certify the foregoing to be a true and complete transcript of the records and papers on file in my office relating to the administration of the estate of Abraham Curtis, deceased; and that the same were respectively filed therein on the days above designated.

In witness whereof I hereto set my hand and affix the seal of said court at office this 4th day of March, 1870.

[SEAL.] W. E. WAGNER, *Clerk.*

Decision of Com's'r Int. Revenue, marked X, No. 4.

The decision of Mr. Delano, Commissioner of Internal Revenue, marked "X, No. 4."

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, 22 *Feb.*, 1870.

401 SIR: Your letter of 15 Feb., 1870, respecting estate of F. Curtis, has been received.

Assessor B. Emmons, of St. Charles, has this day been specially instructed in the case, and you are respectfully referred to him.

Very respectfully,

C. DELANO, *Commissioner.*

S. T. GLOVER, Esq.,
Att'y at law, St. Louis, Mo.

(Copy.)

OFFICE OF INTERNAL REVENUE,
Washington, 22*d Feb.*, 1870.

SIR: S. T. Glover, of St. Louis, writes, on 15th inst., that Fielding Curtis, of Callaway Co., Mo., died in 1861, but that his estate remains undistributed through neglect of Zadok Hook, administrator, and inquires as to legacy and succession tax. I have referred Mr. G. to you. You are advised that if Mr. Curtis died in 1861 no legacy tax accrues on distribution of his personal property. If no life-tenancy on his realty has been extinguished since June 30, 1864, no succession tax accrues.

Respectfully,

C. DELANO,
Commissioner.

B. EMMONS, *Assessor, St. Charles, Mo.*

ASSESSOR'S OFFICE, FOURTH DISTRICT MISSOURI,
St. Charles, March 9, 1870.

Messrs. GLOVER & SHEPLEY.

GENTLEMEN: Enclosed herewith please find copy of Comm'r Delano's decision in regard to estate of Fielding Curtis, dec'd. Your favor in regard thereto was rec'd at this office during my absence in making some distillery examinations; hence the delay in reply.

Very respectfully, y'rs,

BEN. EMMONS, *Assessor.*

402 EVIDENCE FOR DEFENDANTS.

The deposition of Zadok Hook, one of the defendants, taken at Fulton, Missouri, 20th December, 1869.

(This is the same deposition which is used in evidence for plaintiffs, and is herewith copied, beginning at page 274.)

The deposition of said Zadok Hook, taken before the master herein, 23d March, 1870.

(This deposition is embraced in the master's report hereinbefore copied, and is contained between pages 66 and 79.)

Deposition of John A. Hockaday.

Deposition of John A. Hockaday, taken at Fulton, Callaway County, Missouri, before James W. Overton, notary public, on the 18th day of December, 1869.

JOHN A. HOCKADAY, being produced as a witness for the defendants, and being duly cautioned and sworn, deposeth and saith:

My name is Jno. A. Hockaday, and I reside near Fulton, Callaway County, Missouri. In the month of May, 1865, Zadok Hook, one of the defendants, invited me to accompany him to the State of Virginia, where he wished to see the heirs of Fielding Curtis, deceased, for the
403 purpose of settling his affairs with them as said Curtis' administrator. He stated that he disliked to travel through that country, so soon after the war, alone, and he therefore desired some person to go with him, and stated to me that if I would accompany him he would pay my expences on the trip. He further stated that he had started to Virginia alone, on the same business, the winter previous, and got as far as Washington City, where he was advised not to attempt to go down into Virginia, as he might have dificulty in getting through the lines, as the war was then going on. At the time he requested me to go with him I told him that I could not go at that time, but if he would wait until the spring courts were over, and particularly the circuit court, in Boone County, where I had an important case, and I was at leasure, I would be very glad to take the trip. He stated that he was not ready to go at that time, and he would wait until it suited me to go with him, after my return from the Boone circuit court. I enquired of Mr. Hook when he would be ready to start, and told him I was ready to start at any time. He said he would be ready in a few weeks, and would give me due notice. On the fifth of June, 1865, he informed me that he would be ready to start the next day if it suited me. I told him it did, and we set out on our journey to Virginia at that time. I did not understand that I was accompanying Mr. Hook on the

trip as an attorney, but merely as a traveling companion. He
404 did not employ me as such. He offered me no fees. I charged
him none; have never received any, nor don't expect to receive
any. I had never been Mr. Hook's attorney in his business matters, in Callaway County, Missouri, and my only inducement for attending him on his trip to Virginia was the payment of my expences by him, and from the simple pleasure and satisfaction I might have making it. I was then a young and unmarried man; had been pretty closely confined during the war—confined at home—and I felt that I would enjoy the recreation of such a trip, and Mr. Hook being an old acquaintance, and withal a genial, clever fellow, and pleasant traveling companion, and I having never made a similar trip, and being desirous of visiting Washington City, and viewing the battle-fields of Virginia, which had become famous in the history of our country, I accompanied him, and felt that I was well compensated for the trip. These were the sole inducements I had in making the trip. After reaching Virginia, some time in the month of June, 1865, I was present at the residence of Mrs. Anne Payne, near Culpepper Court-House, in Virginia, where a settlement was made between Mr. Hook, as administrator of Fielding Curtis, deceased, and Mrs. Ann Payne, and Mrs. Gwyn, and Mrs. Susan Curtis, who were all sisters of Fielding Curtis, dec'd. At the same time and place, there were present Mrs. Ann Payne, Mrs. Gwyn, and Mrs. Susan Curtis, also Peter J. Norris, son-in-law of
405 Mrs. Gwyn, and John Payne, son of Mrs. Ann Payne, (who negociated the settlement for the old ladies,) and myself & Hook, and two daughters of Mrs. Payne were also present, that is, the two latter were in and out. When this settlement was broached the foregoing parties were all in the same room. Mr. Jno. Payne, after being introduced to Mr. Hook, and engaging in general conversation on other matters for a few moments, remarked to Mr. Hook, that he believed he (Hook) was the administrator of the estate of his uncle, Fielding Curtis, and had come on for the purpose of making a settlement with his heirs. Mr. Hook replied in the affirmative. Mr. Payne remarked that he did not think they, the three sisters, could accept the amount he had offered in full of their interests, which I learned from the parties was thirty-eight hundred dollars for each one of the brothers and sisters of the deceased then living, and to the heirs or children of such brothers and sisters that might be dead, and who had not already been paid off; that he (Hook) had written a letter to his uncle, Abraham Curtis, in 1861, stating that the estate was worth upwards of sixty thousand dollars, & assuming that this amount had yielded some interest, he could not see how the interest of the heirs could be reduced to so small an amount. I do not pretend to give the exact language of the parties, but simply
406 the substance of the conversation as I understood it & remember it. Mr. Hook admitted that he had written this letter, and that it contained the facts as they existed at the time it was written, but stated that a considerable portion of the funds of the estate had yielded no interest for several years; that he had collected up a portion of it in the early part of the war, and was afraid to reloan it, on account of the insecurity of matters here; that he had packed it, or conveyed it from this point to St. Louis for safe keeping, and often at a considerable personal risk; that he had had the expenses of the estate to pay out of this fund, of which he made mention of a monument which he had erected over the grave of the deceased. He futher stated that he had offered to pay them as much as he thought he could afford to pay, under all the circumstances, with the risks he would have to run in the

matter; that the amount he offered them would consume all the cash of the estate he had in hands, together with such notes as he considered as equivalent to cash, (that is such as might be readily collected,) and that the ballance of the estate was in outstanding notes, which he feared there would be some considerable loss upon, and especially so if immediate and speedy collection was resorted to, the parties owing them might, in such event, either put their property out of their hands, or under forced sale might largely default in paying them off;
407 but that if he could get them into his own hands, and give further indulgence, and get additional securities, he might likely make something out of them; that he had been very much annoyed and perplexed with the estate; that he was very anxious to get it settled up in some way, and be relieved and feel free once more. Mr. Hook, after making these remarks, left the room and went out into the yard. In a very few minutes after, the three old ladies, Jno. Payne, and Norris also left the room, and went out doors together; I remained in the room. About one-quarter of an hour after Mr. Hook came to the door and called me out. I went out and found him with these other parties near the door. He (Hook) told me they had agreed upon a settlement; that they had agreed that if he would pay them five thousand dollars each they would release him or let him out, & that they further agreed to give him a refunding bond to refund twelve hundred dollars of the sum paid to each, provided he did not collect that amount to each heir, in five years from that time, and that he wanted me to draw up this refunding bond, and the other necessary papers. I do not know who made the original proposition to give a refunding bond; I drew the bond and transfers from the other parties to Mr. Hook, conveying their remaining interests in the estate to Mr. Hook.

(Mr. Hayden, attorney for defendants, here produces a paper
408 purporting to be a transfer and settlement of Ann Payne, Susan Curtis, Mary Gwyn, to defendant, Hook, dated June 19th, 1865, and attested by the witness, Jno. Payne and Peter J. Norris, which paper is hereto annexed, marked Exhibit Number One of the deposition of this witness, and who says that said paper was drawn up by him, executed by the parties, who signed it by their "cross," and attested by the witnesses, as it purports. Witness further states that this paper was left in the hands of either Payne or Norris, to be held by them until the money was paid, which was done in a few days thereafter, in Washinton City, and this paper, together with the refunding bond, was then delivered to Mr. Hook.)

Q. by Mr. Hayden for defendants. State if any other conversation took place between the parties, at the time of the execution of these papers, or during said negotiations and settlement, that you had heard.

Ans. While I was drawing the refunding bond, I made some inquiry as to some facts in the settlement, that I did not understand, when Mr. Peter Norris remarked that it was not worth while to be so particular about it; that you all would make ten thousand dollars by this transaction, anyhow; to which I replied that I wanted it distinctly understood, then and there, that I had nothing to do with the transaction; had no interest in it, and was not making a cent by it, but as to what
409 Mr. Hook was making I knew nothing. This remark was laughingly made by Mr. Norris.

Q. by Mr. Hayden for defendants. Do you know what financial arrangements were made by Mr. Hook at any time to meet a settlement with the Curtis heirs?

Ans. I know of none made by him before the settlement in June, 1865,

but before he went to Virginia a second time, to settle with other heirs of the estate there, say, in July or August, 1865, I only know of my own knowledge of his borrowing and endorsing for other parties, to raise some four thousand dollars; I know of other matters by hearsay.

Q. by Mr. Hayden for defendants. Have you been a practicing attorney in Callaway County; if so, how long?

Ans. I have been, for ten or eleven years.

Q. by Mr. Hayden for defendants. State whether you are acquainted with the customary rules and practice of the Callaway county court in their settlements with administrators and guardians, as to the rate of interest charged against them?

(This question objected to by Mr. Glover, counsel for plaintiffs, as being incompetent and irrelevant.)

Ans. I am not acquainted with universal rule of the Callaway county court in such cases, but I know some cases which have come under my observation. I think it is customary with our county court, & has been a long time, to charge administrators & guardians interest
410 at six per cent., year by year, on ballances in their hands, except where objections were urged by interested parties and a larger amount proven to have been received by the administrator or guardian. I would say that when the administrator or guardian was receiving and paying out, and there was no data on which to ascertain the real amount of interest, the court would verage it at six per cent.; though *though* on some amounts a higher rate of interest might have been received.

Q. by Mr. Hayden for defendants. What was the financial condition of affairs here in the years 1862, '3, & '4, & '5?

(Mr. Glover objects for the same reasons as above.)

Ans. It was in a very confused, disordered state in the years 1862, '63, '64, & part of 1865; there was a very great distrust of the stabilities of the currency of the country, and apprehension of robberies prevailed from armed men and thieves.

Q. by Mr. Hayden for defendants. Do you know at what rate of interest money could be loaned in Callaway County during those years?

Ans. During a greater portion of those years the market was so flooded with money to loan to good and solvent men, that it was very difficult to make a loan at six per cent.; and very often there were loans made to men for several years without any interest, solvent men being afraid to hold or to borrow. In some cases loans were made as
411 high as ten per cent., but this was not the customary rate.

Q. by Mr. Hayden for defendants. What were the customary, and considered to be the safest, investments in Callaway County by the best financiers and money loaners, at that time?

Ans. The safest and most discreet monied men generally invested in gold; there seemed to be a mania on that subject.

Cross-examination by Mr. S. T. Glover for plaintiffs:

Q. Were you known to Mr. Hook as a practicing attorney from the time you entered the bar?

Ans. I was.

Q. When did Mr. Hook first talk with you of his business with Curtis' heirs?

Ans. I think probably on the way, though he had once or twice before named the subject to me.

Q. Did he ever consult or advise with you concerning it; if so, when?

Ans. He did on the trip while going to Virginia; the subject was referred to often.

(Mr. Hayden, for defendants, here says that we disclaim any objection on the score of professional advice, and are perfectly willing the witness may state everything.)

Q. What did Mr. Hook say of this matter of his settlement
412 with Curtis' heirs on the way to Virginia?

Ans. His general plan in the trip seemed to be to ascertain the heirs; who they were, where they lived, and their relationship to the deceased, and to make a settlement with them as the administrator of the estate of Fielding Curtis, by compromise, or purchase of their interests in the estate, if possible. I talked with him of the probabilities or improbabilities of his success. I told him I doubted whether he would succeed, unless the heirs knew something of the condition of the estate. I told Mr. Hook that if he made or attempted any settlement with the heirs by purchase or compromise, to give them the true condition of the estate, to conceal nothing, and not misrepresent to them; if he did, the transaction would really amount to nothing, and give him trouble besides.

Q. Did Mr. Hook tell you the value of the estate of Mr. Curtis while on the way to Virginia?

Ans. He did not; never told me at any time, nor did I ever ask him or wish to know, and my impression is I so stated to him.

Q. Was Mr. Hook very anxious you should accompany him to Virginia?

Ans. I think Mr. Hook wanted me to go, and he had good liquor on the road.

413 Q. Do you know that Jno. Payne or P. J. Norris, or either of them, was agent of Hook in any way in regard to that settlement, or any settlement, with any of Curtis' heirs?

Ans. I don't think either of them was in regard to the settlement with the three old ladies. They were acting for the old ladies. My impression is, Mr. Hook told me that Norris and Payne were to see the other heirs, and see whether they would make the same arrangement as the three old ladies, and they did so; and he told me once that he paid them one hundred dollars, and at another time one thousand dollars for their services.

(Mr. Hayden, for defendants, here objects to the relevancy and competency of that portion of the last question referring to any other settlement with the Curtis heirs than the one with Mrs. Payne, Susan Curtis, and Mary Gwyn, and all the evidence in the answer of the witness thereto refering to any other settlements with Curtis' heirs.)

Q. Did not Mr. Hook in your presence say to the plaintiffs, Ann Payne, Susan Curtis, or Mary Gwyn, or one or more of them, that the good and available assetts of Fielding Curtis' estate were not worth over thirty-eight hundred dollars to each of them?

Ans. He did not in that precise language. All that I heard him say to those parties, or any of them, is detailed in my examination-
414 in-chief.

Q. Do you not know that Mr. Hook, by representations to said parties, or one or more of them, led them to believe that the good and available assetts of said estate were not worth more than thirty-eight hundred dollars to each of said plaintiffs?

Ans. In the conversation I heard between Mr. Hook and these parties, as detailed in my examination-in-chief, I think his representations had that tendency, provided said heirs were to be paid off immediately in cash.

Q. The purpose of the last question was to ascertain from you, as the

value of United States legal-tender Treasury notes and currency during the war.

(Question objected to for same reasons as above.)

Ans. On that subject there was a difference of opinion, a large majority of the people expressing a total want of confidence in the
419 stability and permanent value of United States legal-tender Treasury notes and currency; a few there were, who had confidence in the stability of the legal-tender notes & currency. I was one of the few who had confidence.

Q. What rate of interest could be obtained on the loan of money?

(Objected to for reasons above given.)

Ans. It was a difficult matter to loan money during the war, at any rate of interest. I know of one instance where a loan was made without interest, and the debt secured by real estate.

(Mr. Boulware, counsel for complainants, here objects to the statement of witness where he particularizes a loan of money.)

Q. What investments were considered safest by financiers and monied men during the war?

(Objected by Mr. Boulware, for irrelevancy and incompetency.)

Ans. Many persons who had money considered it safest to invest in gold.

Q. What rate of interest was charged by the Callaway county court, against executors, administrators, and guardians, during the war?

(Objected to for irrelevancy and incompetency.)

Ans. The Callaway county court seemed to recognize, in making settlements with such parties, the difficulty of loaning money and obtaining any interest upon it, and, therefore, no regular rate of
420 interest was agreed upon in the settlements, as a general thing. Where such parties reported interest as having been collected by them, that was charged against them. I was acting deputy county clerk during the latter part of the war, and often recorded such settlements. I also assisted many such parties in making out their settlements.

Cross-examined by Mr. Boulware, counsel for complainants & appearers:

Q. Were you a money-lender during the late war?

Ans. I was not.

Q. Were your answers to the questions propounded to you in your examination-in-chief herein, in regard to the rate of interest which could be obtained during the war, simply your own opinion in regard to the matter?

Ans. My answers were made in conformity with my opinion, which was made up from surrounding circumstances.

Q. Did you buy or sell gold during the war?

Ans. I neither had money nor dealt in any except a little pocket change occasionally. Further deponent saith not.

DANIEL NOLLEY.

Deposition of Geo. Bartley.

Deposition of George Bartley, taken before James W. Overton, notary public at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

GEORGE BARTLEY being produced as a witness for the defendants, and being duly cautioned and sworn, deposeth and saith:

421 Q. What is your name, age, place of residence, and where did you reside during the late civil war?

Ans. My name is Geo. Bartley; my age is seventy years; and I reside now within one & a half miles of Fulton, in Callaway County, Missouri, where I have resided for the past twenty years.

Q. What was the condition of affairs during the late war in Callaway County, Missouri, as regards the safety of money?

(Mr. Boulware, counsel for the complainants & appearers, here objects to the question as being irrelevant and incompetent.)

Ans. The country was infested with thieves, robbers, & murderers, and consequently it was very dangerous to keep money in one's possession. I know of one man burying his gold, amounting to three or four thousand dollars; & I heard of others.

Q. What was the public confidence as to the stability and permanent value of legal-tender United States Treasury notes and currency?

(Objected to by Mr. Boulware as irrelevant & incompetent.)

Ans. The general opinion was that it was unsafe and uncertain, and would depreciate, & finally become worthless and similar to the old continental money.

Q. What investments were considered safest by monied men?

(Objected to for same reasons as above.)

Ans. I was not a money-loaner, nor a monied man; so far as
422 my observation went, there was a universal disposition to invest in gold.

Q. What rate of interest could be obtained on the loan of money?

(Objected to for same reasons as above.)

Ans. During the war it was difficult to loan at any rate of interest; I heard of two or three instances where persons loaned their money without interest.

(The statement of witness in particularizing & hearsay loans, objected to by Mr. Boulware.)

And further deponent saith not.

GEO. BARTLEY.

Deposition of J. J. P. Johnson.

Deposition of J. P. Johnson, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

J J. P. JOHNSON, being produced as a witness for defendants, & being duly cautioned & sworn, deposeth & saith:

Q. What is your name, age, & where do you reside, & where did you reside during the late civil war?

Ans. My name is Joshua J. P. Johnson; reside in Cedar Township, Callaway County, Missouri, & have resided there for 13 years past.

Q. What was the condition of affairs in Callaway County during the war, as to the safety of money?

(Objected to as irrelevant & incompetent.)

Ans. It was very unsafe to keep money on hand, as it was liable to be stolen at any time.

Q. What was the public confidence in the stability & perma-
423 nent value of legal-tender United States Treasury notes and currency?

(Objected to by counsel for complainants for reasons as above.)

Ans. It was considered doubtful by the masses of the community in this county; I had faith in it myself.

Q. How did the masses of the community regard it?

(Objected as irrelevant, incompetent, and leading.)

Ans. They believed it would be repudiated like the old continental money.

Q. What investments were considered safest at that time by monied men?

(Objected for same reasons as above.)

Ans. Gold was considered the safest investment.

Q. What rate of interest could be obtained on the loan of money?

(Objected to for same reasons as before.)

Ans. Not more than six per cent. during the war.

Q. Could money be loaned readily at any rate of interest during the war?

(Objected to for same reasons as before.)

Ans. It could not during the war; I know of persons who were willing to loan money without any rate of interest, in order to have it secure.

Q. What rate of interest was charged by the Callaway County court during the war against executors, administrators, and guardians?

(Objected to as being irrelevant & incompetent.)

Ans. I was one of the judges of the county court at that time, & I think the rate of interest charged such parties was six per cent., except where it was made satisfactory to the court that the money could
424 not be loaned safely, when no interest was charged.

Cross-examined by Mr. Boulware, counsel for complainants & appearers:

Q. Were you during the war, or since, a money-loaner?

Ans. No, sir.

Q. Did you at any time buy or sell gold?

Ans. No, sir.

Q. Do you know of any money being out at ten per cent. compound interest, during the war?

Ans. I do not know of any, except in the Butler estate, which was loaned before the war, & secured by real estate. I know of none so loaned during the war.

Q. Do you know, of your own knowledge, of any money that was loaned during the war without interest?

Ans. I know of money that was offered to be loaned without interest, but know of *m*one that was so loaned.

Q. Were not those parties in Callaway County who depreciated the United States currency, & regarded it as of no value, known and regarded as rebels?

Ans. As a general thing they were.

Q. Were not those parties who considered gold as the safest investment, of the same character?

Ans. They were.

Reëxamined by Mr. Hayden, counsel for defendants:

Q. Was this disrepute of United States currency & notes wholely confined to the rebel element?

425 Ans. There were some Union men who had some little doubts about it.

Q. Was there any class of the community who did not prefer gold to currency?

Ans. Any one would have preferred gold.

And further deponent saith not.

J. J. P. JOHNSON.

Deposition of Henry S. Turner.

Deposition of Henry S. Turner, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

HENRY S. TURNER, being produced as a witness for the defendants, & being duly cautioned and sworn, deposeth & saith as follows:

Q. State your age, & place of residence, & where you resided during the late civil war.

Ans. My name is Henry S. Turner; my age is sixty-four years; & I reside & did reside in Callaway County during the entire war.

Q. What was the condition of affairs in Callaway County, Missouri, during the war, as to the safety of money?

(Objected to as irrelevant & incompetent.)

Ans. It was considered to be very unsafe if it was known that there was money about one's premises.

Q. What was the public confidence in the stability & permanent value of the United States legal-tender notes & currency?

(Objected to for reasons as before.)

Ans. As a general thing, to hear the people talk, they had but little confidence in it.

426 Q. Did they seem to anticipate a depreciation in its value?

(Objected to for same reasons as above.)

Ans. As a general thing they seemed to think that the United States currency would become worthlesss.

Q. What investments were considered safest by monied men?

(Objected to for same reasons as before.)

Ans. Those who had United States Treasury notes were anxious to invest them in gold.

Q. What rate of interest could be obtained on the loan of money?

(Objected to for same reasons as before.)

Ans. I don't think that money could be loaned at any rate of interest. I know of persons who were administrators who took money off to St. Louis and deposited it for safe keeping, in consequence of not being able to loan it here.

Q. State what official position you occupied during the war, if any.

(Objected to for same reasons as above.)

Ans. I was one of the judges of the county court of Callaway County, Missouri.

Q. State what rate of interest was charged by the county court during the war, while you were on the bench, against administrators, executors, and guardians.

(Objected to for same reasons as above.)

Ans. In settlements the law require that such parties should return or report all interest received by them upon satisfactory statement, under oath, to the court. Some were charged six per cent., and a great many were charged no interest at all, in consequence of their receiving none, the funds being on deposit in St. Louis, or elsewhere.

Cross-examined by Mr. Boulaware, for complainants:

427 Q. Were you a money-lender during the war or since?

Ans. I was not.

Q. Did you borrow any money during the war; if so, what rate of interest did you pay?

Ans. I did not.

Q. Are you related to Zadok Hook, one of the defendants herein; & if so, how?

Ans. He is the nephew of my wife.

Q. Did you buy or sell gold during the war or since?

Ans. I did not.

Q. Have you not taken great interest in advising Mr. Hook in regard to his defence in this action?

Ans. I have never spoken a word to him on the subject, that I remember.

Q. Do you not now reside on a farm that belongs to Mr. Hook?

Ans. I reside on a farm he claims as his.

Q. In your answer to the questions about the rate of interest and safety of money in this county, on your examination-in-chief, did you not simply give your opinion?

Ans. I gave it as my opinion, which was based upon the way in which people talked and expressed themselves in regard to the currency, & my knowledge of marauding bands prowling through the country.

Q. Do you know, of your personal knowledge, of any money being loaned during the war at a less rate of interest than six per cent.?

428 Ans. I know of no money being loaned at all during that time. Further deponent saith not.

H. S. TURNER.

Deposition of Sam'l H. Berry

Deposition of Samuel H. Berry, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

SAMUEL H. BERRY, being produced as a witness for defendants, & being duly cautioned & sworn, deposeth & saith:

Q. State your age, place of residence, & where you resided during the late civil war.

Ans. My age is fifty-four years; & I reside & have resided in Fulton Township, Callaway County, Missouri, for the past forty-six years.

Q. What was the condition of affairs in Callaway County during the war as to the safety of money?

(Objected to by Mr. Boulware as being irrelevant & incompetent.)

Ans. The people felt it to be unsafe to keep money about them. This was the general feeling and opinion. Persons shiping produce to Saint Louis would instruct their commission merchants to deposit the money there for safety rather than have it sent back to them.

Q. What was the public confidence in the stability and permanent value of legal-tender United States Treasury notes and currency?

(Objected to for same reasons as before.)

Ans. The public had but little confidence in it—some would not sell their produce for it.

Q. What investments were considered safest by monied men?

429 (Objected to for same reasons as before.)

Ans. Gold was considered the safest investment.

Q. At what rate of interest could money be loaned?

(Objected to for same reasons as before.)

Ans. A good part of the time during the war it was dificult to loan money at any rate of interest to good & solvent men.

Cross-examined by Mr. Boulware:

Q. Were you a money-loaner during the war?

Ans. I did not loan nor borrow during the war.

Q. Did you buy or sell gold during the war?

Ans. I bought a little for myself & for three other persons, amounting in all to about three thousand dollars.

& further deponent saith not.

SAM'L H. BERRY.

Deposition of W'm H. Bailey.

Deposition of William H. Bailey, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

W'M H. BAILEY, being produced as a witness for the defendants, & being duly cautioned & sworn, deposeth & saith as follows:

Q. State your age, place of residence, & where you resided during the late civil war.

Ans. My age is fifty-eight years; & I reside in the vicinity of Fulton, & have so resided for the last thirteen years, & in the county for forty-one years.

Q. What was the condition of affairs in this county, during the war, as to the safety of money?

(Objected to as being incompetent and irrelevant.)

430 Ans. It was not considered safe. I know of some robberies; money was buried for safe keeping; I buried some for myself and some for others; I considered it dangerous as to life and as to losing it, to have money about one's person or house.

Q. What was the public confidence as to the stability & permanent value of legal-tender United States Treasury notes & currency?

(Objected to for same reasons as before.)

Ans. Not very good; some few thought it good, but the masses of the people thought it not good and liable to depreciation.

Q. What investment was considered safest by monied men?

(Objected to for reasons as before stated.)

Ans. With one or two exceptions, all those persons I talked with upon the subject, the purchase of gold was thought to be the best.

Q. What rate of interest could be obtained, during the war, upon the loan of money?

(Objected to for reasons as before given.)

Ans. I borrowed some money, in the latter part of 1862, at six per cent. I know of no money having been loaned without interest. I knew of one instance where money was loaned at eight per cent., & that was in March, 1863.

Cross-examined by Mr. Boulware, for complainants:

Q. Were you a money-loaner during the war?

Ans. I was not.

Q. Did you buy or sell gold during the war?

431 Ans. I bought some, & sold it after the war.

Q. Do you know of any money being loaned at a less rate than six per cent. during the war?

Ans. I do not.

Q. Do you know, of your own knowledge, any person who had money they could not loan during the war?

Ans. At one time I heard one party say he had money he could not loan at a greater rate than six per cent., being the same party from whom I borrowed, as before stated. He said he would like I should take three times as much at the same rate, which he feared he would not be able to loan at six per cent.

Re-examination by Mr. Hayden:

Q. You speak of a loan at eight per cent.; state the circumstances connected with that loan.

(Objected to as incompetent and irrelevant.)

Ans. I held a certain partie's note bearing ten per cent. interest for purchase money on real estate; that party borrowed the money at eight per cent. on three years' time, & gave a mortgage on the real estate to secure the payment of that money, & with this money he paid off the note held by me.

Further deponent saith not.

W. H. BAILEY.

Deposition of Harvey Newsom.

Deposition of Harvey Newsom, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

HARVEY NEWSOM, being produced as a witness for defendants,
432 & being duly cautioned & sworn, deposeth & saith as follows:

Q. State your age, place of residence, & where you resided during the late civil war.

Ans. My age is fifty-seven years; I reside in Callaway County, Missouri, & have resided in said county for the past forty-nine years.

Q. What was the condition of affairs in this county during the war as to the safety of money?

(Objected to as being irrelevant & incompetent.)

Ans. As a general thing, I considered it very unsafe for people in the country to have or keep any money about their persons or houses. They were subject to robbery by marauding bands of bad men & by individuals.

Q. What disposition did people make of their money & valuables during the war?

(Objected to for same reasons as above.)

Ans. A good many persons having money that was safe to hold burried it; others invested such as they thought unsafe to hold in real estate, & some in gold; & others again sent their money away to a place of safety.

Q. What was the public confidence as to the stability & permanent value of legal-tender United States Treasury notes & currency?

(Objected to for same reasons as before stated.)

Ans. There was a great want of confidence among the people generally in the stability and ultimate value of legal-tender notes & currency. A great many spent their money freely, saying they prefered most any kind of property to such money, on account of its lia-
433 bility, as they thought, to depreciation.

Q. What investment was considered safest by monied men?

(Objected to for same reasons as given before.)

Ans. Gold & real estate was considered the best investments that could be made at that time, some prefering one & some the other. I suppose a majority prefered gold.

Q. What rate of interest could be obtained on a loan of money?
(Objected to for same reasons as above.)
Ans. I found it dificult to loan it at any rate of interest to good men, who would become responsible for the principal alone. This was my experience. There were men who may have loaned at ten per cent. for small amounts on short time. This I know, in a few cases, of my own knowledge.

Cross-examined by Mr. Boulware:

Q. Did you make inquiry & investigate sufficiently in regard to the rate of interest to be able to say now at what rate of interest money could be loaned at during the war?
Ans. I satisfied myself that I could not loan money safely at six per cent. during the war. I therefore took mine to St. Louis & invested it in Government securities or bonds.
Q. Did you buy or sell gold during the war?
Ans. I bought a small amount, & sold it in a short time, & invested it in Government bonds.
434 Q. Did you not have faith and confidence in United States Treasury notes and bonds?
Ans. I had full faith in them, & proved it by my works.
Further deponent saith not.

H. NEWSOM.

Deposition of W'm Carrington.

Deposition of William Carrington, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

W'M CARRINGTON, being produced as a witness for the defendants, & being duly cautioned & sworn, deposeth & saith as follows:

Q. What is your age, place of residence, & where did you reside during the late civil war?
Ans. My age is fifty-four years, and I have resided in Callaway County, Missouri, for the past forty-four years.
Q. What was the condition of affairs in Callaway County as to the safety of money during the war?
(Objected to as irrelevant & incompetent.)
Ans. Money was very unsafe, from the fact that it was dangerous to keep it about one's person or house; liable to be taken from them by robers. A great many persons bought gold and burried it.
Q. What was the public confidence as to the stability & permanent value of legal-tender United States Treasury notes & currency?
(Objected to for same reasons as before given.)
Ans. As a general thing, the public had but little confidence in them, from the fact that the difference in the market value of them and
435 gold was so great that the people were uncertain as to where it would stop.
Q. What investment was considered safest by monied men?
(Objected to for same reasons as before given.)
Ans. Gold and land; some persons prefered one & some the other—most persons prefered gold.
Q. What rate of interest could be obtained at that time on the loan of money?
(Objected to for same reasons as before given.)

Ans. Money was very difficult to loan at any rate of interest and get it well secured.

Q. Do you know of any money that was loaned without any rate of interest at all?

(Objected to for same reasons as above.)

Ans. I know of a good many instances where it was offered to be loaned without any interest. I had persons to offer it to me so, & beg me to take it without interest.

Cross-examined by Mr. Boulware:

Q. You are one of the defendants in this suit, are you not?

Ans. I am.

Q. Are you not one the securities of Mr. Hook on his bond as public administrator?

Ans. I am.

Q, Did you see defendant Hook shortly after his return from Virginia in 1865?

Ans. I did.

Q. In your first conversation with him after his return from
436 Virginia in 1865, what amount, if any, did he tell you he made in his trade with the heirs of Fielding Curtis, dec'd, in Virginia?

Ans. I don't remember that he ever told me what amount he made.

Q. Did not defendant Hook say in your presence after his return from Virginia in 1865, at his residence in Fulton, in the presence of his then wife, that he had made thirty thousand dollars, or words to that effect, out of the settlement he had made with the heirs of Fielding Curtis, dec'd?

Ans. I have no recollection of his ever making any such statement in my presence there or at any other place or time.

Q. Did defendant Hook state in your presence & in the presence of Jno. B. Williams, after his return from Virginia in 1865, that he had made twenty or thirty thousand dollars by buying out, or settling with the heirs of Fielding Curtis, dec'd, in Virginia, or words to that effect?

Ans. If he ever did I have no recollection of it.

Q. Did defendant Hook at any time or on any occasion, state to you what he had made, if anything, by buying out or settling with the Curtis heirs in Virginia?

Ans. He did not.

Q. Did Hook, on his return from Virginia in 1865, state to you how he had settled with the Curtis heirs in Virginia, & whether he made an advantageous or losing trade with them?

437 Ans. He told me he had bought the Curtis heirs out, & that he would be able to get out of the Curtis estate all right.

Q. Did he make any further statements in regard to buying the Curtis heirs out than that embraced in the last above answer?

Ans. He did; he told me what he paid the heirs to the share, which, if I remember right, was five thousand dollars. I recollect nothing particular that he said further.

Q. Were you a money-lender during the war?

Ans. I don't remember to have loaned any money during the war.

Q. Did you buy or sell gold during the war?

Ans. I did both.

Q. Do you know of your own knowledge any money to be loaned at less than six per cent., during the war?

Ans. I do not. I know of a great deal that was offered at less.

Q. Do you not know that defendant Hook had money loaned during the war at ten per cent. compound interest?

Ans. I do not. I borrowed from him at that time at six per cent., but for a short time.

Q. Do you not know that his brother William was at that time paying him ten per cent. compound interest for money loaned, & have you not heard defendant Hook so state?

Ans. I heard defendant Hook say that he had a mortgage on his brother William's farm, but I never heard him say what rate of
438 interest his brother was paying him. Defendant Hook went his brother W'm's security for an amount of money & had it to pay, & took a mortgage on his brother W'm's farm for the money so paid. In other words, the defendant Hook advanced the money to his brother to pay the debt, and took a mortgage to secure the am't so advanced.

Q. Don't you know, either from your own knowledge, or from what defendant Hook told you, that he had money loaned during the war at ten per cent. compound interest?

Ans. I do not.

Reëxamined by Mr. Hayden:

Q. Mr. Boulware has asked you in regard to conversations had with Mr. Hook about his settlement with the Curtis heirs. Did he, in any of the conversations, speak of, or do you know of your own knowledge of money borrowed by him to pay the Curtis heirs, & if so, to what amount?

(Objected to as being irrelevant & incompetent.)

Ans. I know of his borrowing money, & he told me he borrowed it to pay off or settle with the Curtis heirs, & I went security on the note, which, I think, was for about five thousand dollars. This was in 1865, & just before he went to Virginia the second time, I think. He told me he borrowed about twenty-five hundred dollars for the same purpose, of Mr. Hayden, & also some from Mr. Jno. A. Hockaday, & I think also from W'm H. Wilkerson.

Further deponent saith not.

W'M CARRINGTON.

439 *Deposition of Jno. A. Flood.*

Deposition of John A. Flood, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

JNO. A. FLOOD, being produced as a witness for the defendants, & being duly cautioned and sworn, deposeth & saith as follows:

Q. State your occupation, your age, place of residence, & where you resided during the late civil war.

Ans. My occupation is a lawyer; my age twenty-seven years; I reside in Fulton, & resided in Callaway County during the war.

Q. What was the condition of affairs during the war in Callaway County as to the safety of money?

(Objected to as being irrelevant & incompetent.)

Ans. In my opinion it was very unsafe for persons to keep money in their possession, from its liability to be stolen or robbed from them; I remember once to have burried some six or seven thousand dollars in "greenback," which was under my control; I burried it in an orchard, where it remained until the war was over.

Q. What was the public confidence as to the stability & permanent value of United States legal-tender Treasury notes & currency during the war?

(Objected to for same reasons as before given.)

Ans. The masses of the people had little or no confidence in it, as they feared it might never be redeemed.

Q. What investment was considered safest by monied men?

440 (Objected to for same reason as before given.)

Ans. Gold was considered the safest investment.

Q. What rate of interest could be obtained on the loan of money?

(Objected to for same reasons as above.)

Ans. I don't remember many transactions in that way; I remember one or two persons who would have & did loan some at six per cent., & considered it good interest, & others who would have loaned money without interest.

Q. Were the circuit courts in operation here during the war?

Ans. I know they were not all the time; there were several tirms that lapsed, & there seemed to be an uncertainty in the popular mind as to when we would have another term of the circuit court.

Further deponent saith not.

JOHN A. FLOOD.

Deposition of Ja's Rickenbaugh.

Deposition of James Rickenbaugh, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

JAMES RICKENBAUGH, being produced as a witness for the defendants, & being duly cautioned and sworn, deposeth and saith as follows:

Q. Where did you reside during the late civil war, & what business were you engaged in?

Ans. In Fulton, & I was clerk in the dry-goods store of Card & Bro'.

Q. What was the condition of affairs in Callaway County, during

441 the late war, as to the safety of money?

(Objected to as being irrelevant & incompetent.)

Ans. It was very unsafe for any one to keep money at that time about his person & premises; the firm of Mess. Card sent their money to St. Louis.

Q. What was the public confidence as to the stability & permanent value of legal-tender United States Treasury notes & currency at that time?

(Objected to for reasons as above stated.)

Ans. As far as my own knowledge extended, the general impression among the people here was that it would depreciate.

Q. What was generally considered to be the safest investment at that time?

(Objected to for reasons as before.)

Ans. A great many persons bought gold; I think likely a majority of persons bought gold; I think more persons bought gold than any one thing else.

Q. What rate of interest could be obtained on the loan of money during the war?

(Objected to for same reasons as above.)

Ans. All I know about it is what took place in the house where I was doing business; my impression about the matter is that after the first

year of the war money became very abundant, and was rather difficult to loan at the usual rates of interest; I think Mess. Cards had
442 at that time their indebtedness changed from a higher to a lower rate of interest; my impression is that they had offers made to them to loan them money without any interest, & also other propositions at a low rate of interest; parties say that the firm owed, who would consent to a low rate of interest, were paid off.

Further deponent saith not.

JAMES RICKENBAUGH.

Deposition of Tho's B. Harris.

Deposition of Thomas B. Harris, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 14th day of March, A. D. 1870.

THOMAS B. HARRIS, being produced as a witness for the defendants, & being duly cautioned and sworn, deposeth & saith as follows:

Q. What is your age, place of residence, & where did you reside during the late civil war?

Ans. My age is fifty-three years; reside in Fulton, & resided in Callaway County, Missouri, for thirty-four years past.

Q. What was the condition of affairs in Callaway County, during the late civil war, as to the safety of money?

(Objected to as irrelevant & incompetent.)

Ans. It was regarded as very unsafe & insecure after the war was fully inaugurated; money was concealed & hid in various ways.

Q. What was the public confidence as to the stability & permanent value of United States legal-tender Treasury notes and currency during the war?

443 (Objected to for same reasons as before given.)

Ans. Public confidence was very weak, owing to the opinion that it would depreciate & become worthless.

Q. What investment was considered safest by monied men?

Ans. First, investments in gold; second, real estate, at low values, were considered the best generally.

Q. What rate of interest could be obtained on a loan of money during the war?

(Objected to for same reasons as before.)

Ans. I had no money to loan, but I had money offered to me at rates varying from five per cent. down to nothing—that is, in the latter cases, to keep the money & return it without interest.

Further deponent saith not.

THO'S B. HARRIS.

Deposition of Jno. Bartley.

Deposition of John Bartley, taken before James W. Overton, notary public, at Fulton, Callaway County, on the 15th day of March, A. D. 1870.

JOHN BARTLEY, being produced as a witness for the defendants, & being duly cautioned & sworn, deposeth and saith as follows:

Q. What is your age, place of residence, & where did you reside during the late civil war?

Ans. My age is forty-one years; I reside in Fulton, Callaway County, Missouri, & resided in the same place during the late civil war.

444 Q. What was the condition of affairs in Callaway County, during the late civil war, as to the safety of money?

(Objected to by Mr. Boulware as being irrelevant & incompetent.)

Ans. With me, I thought money was a dangerous thing to have & handle, because one's life was at stake if it were known he had it about his person or premises.

Q. What was the public confidence as to the stability & permanent value of legal-tender United States Treasury notes & currency during that war?

(Objected to as above.)

Ans. So far as my knowledge extends, no one had any confidence in its safety, or being redeemed, or continuing good; people, rather than hold the money & risk the consequences & chances, would spend it for goods, or anything they thought they could use.

Q. What investment at that time was considered safest by monied men?

(Objected to as above.)

Ans. So far as I know, gold and real estate was considered the best investment; I prefered to invest in gold; I know of more transactions by the people in general in gold than in anything else.

Q. What rate of interest could be obtained on the loan of money during that war?

(Objected to as above.)

445 Ans. I know of no rate of interest that could be obtained at that time; I could not loan any safely myself; I had money offered to be loaned to me to keep & use & account for it without interest, and refused it; the first two years of the war I was in the dry-goods business, & quit that business the latter part of 1862, for the reason I was raided on in my store & goods by the Federal soldiers, & they threatened me with arms, & by force took my goods; Col. Krekel's troops raided on me & took my goods by force; also Col. Smart's men took some of my goods; I never had any goods taken by force from me by the rebels; I had taken from me, by force by the rebels, a shot-gun; the country was also infested by bushwhackers & robbers, by some of whom I was once robbed; from these combined causes I concluded it was not safe to continue in business, & retired from the business until after the war.

Cross-examination by Mr. Boulware:

Q. Do you mean to say that no money could be loaned in this country from the spring of 1861 to the spring of 1865, safely?

Ans. I didn't loan any myself during that time; I do not know how it was all over the country; perhaps some money might have been loaned in the first year of the war; I paid what I owed in the year 1861 or 1862, believing it unsafe to keep the money, as the banks began to go down, & the money of the country to depreciate; some of

446 the parties to whom I owed money wanted me to keep it without interest and I refused.

Q. Your statements in regard to interest are confined to your own individual transactions?

Ans. They are.

Q. Do you pretend to say that no money was loaned in Callaway County at from six to eight and ten per cent. interest?

Ans. I do not.

Q. Were you a money-loaner during the war or before?

Ans. I was not, but I was guardian for one party, & tried to loan the funds of my ward as I considered safely, and could not do it; I was guardian as aforesaid during the latter part of the war.

Q. Did you try to loan the money refered to in your answer at a lower rate of interest than ten per cent., secured by real estate?

Ans. I could find no one who would consent to take the money and give the security I thought proper to require; if I had found such an one we could have come to terms as to the rate of interest.

Q. About what amount of money did you hold as such guardian, and when did you so hold it?

Ans. I don't remember the precise time; had about fifteen hundred dollars.

Q. You state in your examination-in-chief, that the reason why you thought it unsafe to keep money and continue merchandizing during the war, was that your store & goods were raided on & taken
447 by soldiers. Please state at what time your store & goods were so taken, & by what soldiers?

Ans. It was in 1862, principally, the last year I was in business; done by Col's Krekel's & Smart's men, who were the principal depredator.

Q. You state that there was a want of confidence in the stability & permanent value of legal-tender United States Treasury notes & currency in this country during the war. Was not this want of confidence generally confined to the rebel portion of the citizens, or those called rebels?

Ans. I would say that it was, for the citizens generally here were called rebels; that is, a majority of the citizens were so called.

Reëxamined by Mr. Hayden:

Q. You stated in your examination-in-chief that the men of Col's Krekel and Smart raided on you during the war while you were merchandizing. I wish to know when that statement was made by you whether Mr. Boulware, the counsel for the complainants & appearers, did not immediately insist that the answer should be put down, as Judge Krekel was on the bench to decide this case, or words to that effect?

(Objected to by Mr. Boulware, as being impertinent, incompetent, irrelevant, & unprofessional.)

Q. I understood Mr. Boulware to say that he wanted to know whose troops did it, as this case was to be tried before Judge Krekel.
448 Further deponent saith not.

JOHN BARTLEY.

Deposition of William Harrison.

Deposition of William Harrison, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 15th day of March, A. D. 1870.

W'M HARRISON, being produced as a witness for the defendants, & being duly cautioned & sworn, deposeth & saith as follows:

Q. What is your age, place of residence, & where did you reside during the late civil war?

Ans. My age is forty-four years; reside in Callaway County, Missouri, where I resided during the late civil war.

Q. What was the condition of affairs in Callaway County, Missouri, during that war, as to the safety of money?

(Objected to by Mr. Boulware as being irrelevant & incompetent.)

Ans. I considered it very unsafe to keep money; it was dangerous, and men would bury and otherwise hide it; I burried some myself.

Q. What was the public confidence in the county at that time as to the stability and permanent value of legal-tender United States Treasury notes & currency?

(Objected to for same reasons as above.)

Ans. As a general thing the people had little or no confidence in it, and got rid of it as best they could.

449 Q. What investment was considered safest by monied men during the war?

(Question objected to by Mr. Boulware as being irrelevant & incompetent.)

Ans. I think most persons thought gold to be the safest investment.

Q. What rate of interest could be obtained at that time on the loan of money?

(Objected to as before.)

Ans. Money could then be borrowed without interest; some was loaned at three per cent., and some at six per cent., none higher than six; I could have borrowed plenty without interest.

Cross-examined by Mr. Boulware:

Q. Could money be borrowed in the years 1861, 1862, 1863, 1864, and until June, 1865, without interest, in Callaway County, Mo.?

Ans. I think, from the fall of 1862 until 1865, it could; I loaned one thousand dollars in April, 1865, for one year, at three (3) per cent.

Further deponent saith not.

WILLIAM HARRISON.

Deposition of Monroe Sampson.

Deposition of Monroe Sampson, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 15th day of March, A. D. 1870.

MONROE SAMPSON, being produced as a witness for defendants, & being duly sworn & cautioned, deposeth & saith as follows:

Q. What is your age, place of residence, & where did you reside during the late civil war?

450 Ans. My age is forty-one years; reside in Callaway County, Missouri, where I resided during the late civil war.

Q. What was the condition of affairs in Callaway County, Missouri, during the late civil war, as to the safety of money?

(Objected to as being irrelevant & incompetent.)

Ans. I thought it unsafe and dangerous to keep money on hand; people generally purchased gold with their "greenback;" I know of two cases where parties gave as high as 280 dollars in "greenback" for one hundred dollars in gold; people burried the money they wanted to keep.

Q. What was the public confidence as to the stability & permanent value of legal-tender United States Treasury notes and currency at that time?

(Objected to for same reasons as above.)

Ans. The general opinion was not good; it was not regarded as safe.

Q. What was considered the safest investment at that time, by monied men?

(Objected to as being irrelevant & incompetent.)

Ans. Gold or real estate; gold being considered prefferable.

Q. What rate of interest could be obtained on the loan of money during the war?

(Objected to for same reasons as above.)

Ans. From nothing, or no interest at all, up to six per cent.; I was offered a loan of five hundred dollars for five years, without interest, if I would give a mortgage on my land, and I refused it.

451 Cross-examined by Mr. Boulware:

Q. Were you a money lender or borrower during the war?

Ans. A borrower.

Q. What rate of interest did you pay?

Ans. Six per cent.

Q. Do you pretend to say that, from April, 1861, till June, 1865, money could not & was not loaned in this county at ten per cent. interest?

Ans. Not to my knowledge.

Q. Are you not one of the defendants in this suit, and a security on the official bond of defendant Hook, as public administrator of Callaway County, Missouri?

Ans. I am.

Q. Do you know of any acts or steps taken by the defendants herein, securities for said Hook, in disposing of or in any way endeavoring to place their property or any part thereof, to avoid the payment of a judgment against said Hook and securities, should one be rendered herein?

Ans. Not to my knowledge, but I have heard things.

Further deponent saith not.

MONROE SAMPSON.

Deposition of Henry Larimore.

Deposition of Henry Larimore, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 15th day of March, A. D. 1870.

HENRY LARIMORE being produced as a witness for the defend-
452 ants, & being duly cautioned and sworn, deposeth and saith as follows:

Q. What is your age, place of residence, & where did you reside during the late civil war?

Ans. My age is fifty-five years; reside in Callaway County, Missouri, where I resided during the late civil war.

Q. What was the condition of affairs in Callaway County during the late civil war, as to the safety of money?

(Objected to by Mr. Boulware as being irrelevant & incompetent.)

Ans. Unsafe & insecure in every particular; various means were resorted to by the people in order to secure their money, such as investing their currency in coin, which they hid away in places considered to be safe, & sending it off to places of safety.

Q. What was the public confidence as to the stability & permanent value of legal-tender United States Treasury notes & currency during that war?

(Objected to for same reasons as above.)

Ans. There seemed to be no confidence in the mind of the public, they believing it would continue to depreciate in value until it would finally become worthless.

Q. What investment was considered safest by monied men during that war?

(Objected to for reasons as above.)

Ans. Gold was considered the best investment, which was either hidden away or sent off to some place of safety, there seeming to be no place of safety here unless it was hidden away.

453 Q. What interest could be obtained on the loan of money during the late civil war?

(Objected to by Mr. Boulware as irrelevant & incompetent.)

Ans. After the actual commencement of hostilities, the battle of Bull Run, money could have been obtained for a term of years without interest. I was offered money enough to pay a pretty heavy debt I owed, without interest, if I would secure it by a mortgage on real estate, which I refused.

Cross-examined by Mr. Boulware:

Q. Were you a money-lender or borrower during the war?

Ans. I was not a lender.

Q. What rate of interest were you paying on money borrowed by, or owing by you during the war?

Ans. At the commencement of the war I was paying ten per cent., & during the war I was enabled to reduce the rate of interest to six per cent., giving my individual note for the amounts I owed, without security of any kind.

Q. Are you not now, and were you not during the late civil war, the owner of large tracts of valuable land in this county?

Ans. I owned a good big tract of land in the hands of Federal soldiers.

Q. Have you not now notes outstanding, given during the war,
454 or a short time prior thereto, bearing ten per cent. compound interest?

Ans. I think not; if I have I am not aware of it; I may be security on some such.

Q. Are you not one of the defendants in this suit, and a security on the official bond of defendant Hook, as public administrator of Callaway County, Missouri?

Ans. I am.

Q. Do you state that no money was or could be loaned in this county from April, 1861, till April, 1865, at ten per cent. interest?

Ans. No, I do not so state. I state this, that during that time it was very difficult to loan money at any rate of interest. The courts had, for a considerable part of the time, ceased to be held, so that there was, during that time, no means of enforcing the payment of money; and, therefore, there was no demand for money to pay debts. As a general thing, persons owing money & likely to have judgment rendered against them would borrow the money to stop the judgments; & there being no courts, as before stated, there was no demand for money for any such purposes.

Further deponent saith not.

HENRY LARIMORE.

Deposition of Achiles Wilkerson.

Deposition of Achiles Wilkerson, taken before James W. Overton, notary public, Fulton, Callaway County, Missouri, on the 15th day of March, A.D. 1870.

ACHILES WILKERSON being produced as a witness for defend-
455 ants, and being duly cautioned & sworn, deposeth & saith as follows:

Q. Please state your age, profession, place of residence, & where you resided during the late civil war.

Ans. My age is forty-nine years; my profession, a physician; my place of residence, Fulton, Calloway County, Missouri, where I resided during the late civil war.

Q. What was the condition of affairs in Callaway County, Mo., during the late civil war, as to the safety of money?

(Objected to by Boulware as irrelevant & incompetent.)

Ans. I regarded it generally as unsafe to keep or to loan money during the late civil war; my knowledge was not very extensive at that time of monied affairs. Persons, or at least some, burried their money; some brought it to Fulton & deposited with individuals; my wife had some gold which she secured in a trunk for several years for a friend.

Q. What was the public confidence in the stability and permanent value of legal-tender United States Treasury notes and currency during the late civil war?

(Objected to by Mr. Boulware as irrelevant & incompetent.)

Ans. Public confidence fluctuated with the progress of the war. I think, at no time during the war did any one think that "greenbacks" would be at par shortly. During the years 1863 & 1864, most every person with whom I talked upon the subject thought that gold
456 would go up to at least three dollars in "greenback" for one in gold; some thought to more than that. There were a good many who thought that the southern confederacy would become an independent government, & in which event "greenbacks" would become worthless; on this there was a diversity of opinion.

Q. What investments were considered by monied men to be the safest during that war?

(Objected to as irrelevant and incompetent.)

Ans. Real estate, having no destructible property on it; but I know some who would not invest in anything, as their money was in gold, & thinking it might become necessary to leave the country, prefered holding it, & they wanted to take their gold with them as a general thing; I think the greater portion prefered to invest in real estate, there being no destructible property on it.

Q. Was there much investment in real estate during the late civil war?

(Objected to for same reasons as above given.)

Ans. I knew of some; not a great deal.

Q. Was there much investment in gold?

(Objected to as before.)

Ans. There was; this is from hearsay.

Q. Were United States legal-tender notes & currency abundant or scarce during that war in this county?

(Question objected to as irrelevant & incompent.)

Ans. Regarded as tolerably plenty, as most everything sold at

457 an increased value to what it did before the war. I mean personalty.

Q. Could United States Treasury notes & currency be readily loaned during that war?

(Objected to for same reasons as above.)

Ans. It could not. There were plenty of lenders, but few borrowers. I knew of several instances of persons having money offered them just to keep and use without any interest and who refused it.

Cross-examined by Mr. Boulware:

Q. Are you acquainted with James S. Henderson, Ed'n B. Parker, & W'm T. Snell, & do you know what has been their occupation for the last ten years?

Ans. I know them all. Judge Henderson was connected with a bank in this place up to within four years ago; so also was Mr. W. T. Snell, & for the last four years he has been engaged in the banking business on his own account; and E. R. Parker, I think, has chiefly been engaged in money-loaning. They are generally considered good business men & financiers. They are now citizens of Fulton, Callaway County, Mo., & two of them now here; & I saw Mr. Snell, the third one, yesterday.

Reëxamined by Mr. Hayden:

Q. Are you acquainted with W'm Harrison, Jno. Bartley, Tho's B. Harris, W'm Carrington, James Rickenbaugh, Louis Rhule, Henry Larimore, Harvey Newsom, Jno. A. Flood, Jno. A. Hockaday, Zadok
458 Hook, and what is their character and standing in the community for financial ability & prudence in business affairs.

(Objected to as irrelevant & incompetent.)

Ans. I am; & my opinion is that they are all good business men & financiers, & are so regarded by the community.

& further the deponent saith not.

A. WILKERSON.

Deposition of Louis Ruhle.

Deposition of Louis Ruhle, taken before James W. Overton, notary public, at Fulton, Callaway County, Missouri, on the 15th day of March, A.D. 1870.

LOUIS RUHLE being produced as a witness for the defendants, & being duly cautioned and sworn, deposeth & saith as follows:

Q. State your age, occupation, place of residence, & where you resided during the late civil war.

Ans. My age is thirty-nine years; business that of dry goods merchant; I reside in Fulton, Callaway County, Missouri, where I resided during the late civil war.

Q. What was the condition of affairs in Callaway County, Missouri, as to the safety of money during that time?

(Objected to as irrelevant & incompetent.)

Ans. Money was very unsafe at that time; so also was the lives of those who kept money about their persons or premises.

Q. What was the public confidence in the county during that time as to the stability and permanent value of legal-tender United States Treasury notes & currency?

(Objected to for same reasons as before.)

459 Ans. Public confidence was such during that time that no one handled any "greenbacks" or legal-tender notes if they could

help it. If they come into the possession of persons they spent it for almost anything they could make use of, before they would take it home, being afraid to keep it at home.

Q. What was considered the safest investment by monied men during that time?

(Objected to for same reasons as heretofore given.)

Ans. The best investment during the war was to buy gold and bury it.

Q. What rate of interest could be obtained in Callaway County, Mo., during that war, on the loan of money?

(Objected to as before.)

Ans. None, to my knowledge. I had money offered me, to be paid back at some future time in legal money, without interest. During that time legal-tender notes and currency was very plentiful.

Cross-examined by Mr. Boulware:

Q. Were you a money-lender or a borrower during the war?

Ans. I was neither; but I could have gotten any amount I wanted.

Q. Did you or not have outstanding debts or a note during the war, on which you were paying interest?

Ans. I did not.

460 Q. Name the parties who offered to let you have the use of money without interest.

Ans. There was one Mr. Herring; don't know his first name. I had numerous such offers, but don't now remember any other names. In 1863, the Odd Fellows wished to make me their treasurer again, & I refused & begged off, as I considered it very unsafe to become responsible for the funds of the order.

Q. Name any parties that you know who loaned any money during the war without interest.

Ans. It has been so long since that I don't now remember.

Q. Can you give the name of any party who borrowed money in this county during the war at a less rate than ten per cent. interest?

Ans. There was none borrowed during that time that I know of.

Q. Is there not now a note due by you to the county school-fund, which bears ten per cent. compound interest?

Ans. No, sir. I was security since the war on a note to the road fund, which note was given before the war. It was not my debt; I was security only. This note was paid last October a year ago. It escaped the attention of the county court during the war, and was lost sight of by me, else it would have been settled long before & to my own advantage.

Further this deponent saith not.

LOUIS RUHLE.

461 UNITED STATES OF AMERICA,
Circuit court for the districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writings hereto annexed to be a copy of the record and proceedings & evidence in case Ann Payne, Susan Curtis, and Mary Guinn, original plaintiffs, and Abiah Guinn and others, plaintiffs, who afterwards appeared before the master, against Zadok Hook et al., as fully as the same remain on file and of record in said case, in my office.

In witness whereof, I hereunto subscribe my name, and affix the seal of said court, at office, in the city of St. Louis, in said districts, this

twenty-sixth day of November, in the year of our Lord eighteen hundred and seventy.

[SEAL.] BEN. F. HICKMAN,
Clerk of said court.

(Indorsed:) United States circuit court, districts of Missouri. Ann Payne, Susan Curtis, and Mary Guinn, original plaintiffs, and Abiah Guinn and others, plaintiffs, who afterwards appeared before the master, against Zadok Hook et al. Duly certified copy of the record & proceedings & evidence in the above entitled cause.

(Indorsement on cover:) No. 360. Zadok Hook et al., appellants, vs. Ann Payne et al. Missouri, C. C. U. S. Filed 8th December, 1870.

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA.

DECEMBER TERM, 1871.

ANN PAYNE, *Respondent*,
vs.
ZADOK HOOK, et al., *Appellants*.

SUSAN CURTIS, *Respondent*,
vs.
ZADOK HOOK, et al., *Appellants*.

MARY GUINN, *Respondent*,
vs.
ZADOK HOOK, et al., *Appellants*.

HENRY GAMBS, Public Administrator of St. Louis County, Mo., et al.—appearers before Alexander Martin, Master in Chancery—*Respondents*,
vs.
ZADOK HOOK, et al., *Appellants*.

Consolidated Suits in Chancery upon appeal from the Circuit Court of the United States for the Districts of Missouri.

J. C. Henderson
for Appellants.

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA.

DECEMBER TERM, 1871.

ANN PAYNE, *Respondent*,
vs.
ZADOK HOOK, et al., *Appellants*.

SUSAN CURTIS, *Respondent*,
vs.
ZADOK HOOK, et al., *Appellants*.

MARY GUINN, *Respondent*,
vs.
ZADOK HOOK, et al., *Appellants*.

HENRY GAMBS, Public Administrator of St. Louis County, Mo., et al.—appearers before Alexander Martin, Master in Chancery—*Respondents*,
vs.
ZADOK HOOK, et al., *Appellanls*.

Consolidated Suits in Chancery upon appeal from the Circuit Court of the United States for the Districts of Missouri.

The respondents are the collateral heirs and distributees of the estate of one Fielding Curtis, who died in the month of February, 1861, in the county of Callaway, in the State of Missouri, intestate, and without lineal descendants, and upon whose estate Zadok Hook, public administrator of said county, proceeded to administer under the laws of Missouri. The other defendants are his sureties on his official bond, as such public administrator.

Ann Payne, Susan Curtis, and Mary Guinn, each filed her separate bill in chancery, in the Circuit Court of the United States, for

the Districts of Missouri, each bill being in substance a counterpart of the others against Hook and his sureties on his official bond, in which they severally allege, in substance, that said Fielding Curtis died in the year 1861, in the county of Callaway, in said State, intestate, and unmarried, and without lineal descendants, leaving complainants and others, his collateral relatives, being brothers and sisters and their descendants, sole heirs and distributees of his estate, which consisted principally of obligations for the payment of money, certain slaves, and other personal property. That under the laws of Missouri, Zadok Hook, then being the public administrator of Callaway county, having entered into a bond as such, for a faithful discharge of his duties, with his co-defendants, as his sureties, took into his possession, under an order of the Callaway County Court, said estate, for the purposes of administration; that as such administrator, he made annual settlements with said county court, in each and every year, down to the year 1865; and that in his last annual settlement, in May, 1865, a balance was shown of $63,586 76; that the whole amount of available assets of said estate, including interest on money due said Fielding Curtis, at his death, amounted to not less than $80,000; that Hook failed to inventory more than $15,000 of assets belonging to said Curtis' estate, consisting of money, gold and silver, bonds and notes, and obligations calling for money; that in his first annual settlement, Hook failed to account for and charge himself with a large amount of money, to-wit; $20,000 belonging to said decedents estate, which he received for interest on money of said estate, and which has ever since remained in his hands, unaccounted for; that in his second annual settlement, he failed and refused to account for and charge himself with another large sum of money for interest received by him, on money belonging to said estate, to-wit: the sum of $20,000; that in his third annual settlement he failed and refused to account for and charge himself with another large sum of money, belonging to said estate, for interest received by him on moneys of said estate, to-wit: the the sum of $20,000; and in his fourth annual settlement, he failed to account for and charge himself with the further sum of $20,000, for interest received by him, on moneys of the estate; all of which said several sums of money, amounting in the aggregate to $95,000, they allege still remain in Hook's hands unaccounted for. The complainants further allege, that Hook received ten per cent. interest on all the bonds, notes and

obligations of the estate; that he collected only a small portion of said bonds, etc., not exceeding $10,000, prior to September 24, 1862; and that afterwards he collected and received the residue of said bonds and obligations; that said administrator employed and used the funds of said estate in his hands for his private gain, in every way he could, in trade, speculations, in buying and selling gold coin, in shaving paper, in loaning the same at high and even usurious interest; that he never received less than ten per cent. interest on all the money in his hands; and for a great part of it he received interest at the rate of twelve or fifteen per cent. per annum; that for such purpose the said Hook sent to St. Louis the money of said estate in his hands, as such administrator, and kept it there, in order to use, and did so use it in speculation for his own personal benefit; that each and every item in his several settlements, wherein he, Hook, credits the estate with interest on the money in his hands, at the rate of six per cent. is false and fraudulent; that his failure to charge himself with interest, at the rate of ten per cent. per annum, at least, is false and fraudulent; and, generally, that each of said several annual settlements were false and fraudulent, by reason of said failure of Hook to account for said several sums of interest, so alleged to have been received by him; all of which allegations, it will be noticed, are not made upon complainants' information, or belief, but are positively stated as facts, and are sworn to as such.

The bill further alleges, that owing to the want of communication between the State of Virginia, the place of complainant's residence, and Callaway county, Missouri, growing out of the late civil war, complainant *was totally ignorant* of the value of said Fielding Curtis' estate, as late as the 19th day of June, 1865, and that about that time she received from said Hook, *the only information* she possessed in reference thereto; that said Hook was kind enough to make a trip all the way to Culpepper county, Virginia, to communicate said information, which was as follows: That he, Hook, was the legal administrator of Fielding Curtis' estate; that he had died in February, 1861; that the precise amount of the share of a distributee could not then be ascertained, owing to the uncertainty of collecting money, notes, and evidences of debt due the estate; that he, Hook, out of his very great kindness for complainants, was willing to pay each on account of her interest in said estate, the sum of $5,000, which he, Hook, said was $1,200, over and above

her share of all the available and undoubted assets of the estate, including money and notes; that the real actual value of her interest was about $3,800, and he, said Hook, proposed that inasmuch as he was so generous, if it should be that he could not collect her share, $5,000 of the assets, she ought to refund as much of said sum of $5,000, as he should not realize above the $3,800; and said Hook also said, that he would not hold her bound to refund to him longer than five years, for if he could not close the outstanding claims in five years, he would not claim the refunding bond. Complainant states that she can neither read nor write, and had no experience in transacting any legal business, and confidently relied upon the representations of said Hook; that she received from him the said sum of $5,000, and made her mark on a paper, which he requested her to sign, which paper is dated June 19, 1865. Complainant states that she is informed and believes, that said paper was drawn by Hook's own attorney, whom he had retained in Missouri, to accompany him to Culpepper, Virginia, to assist him with legal advice in paying to complainant $1,200 more than he said was her due, and to prevent the complainant from taking advantage of him.

The bill further charges, that complainants regret to have to state, that all the aforesaid representations of said Hook, touching the condition of said estate, its value, and the amount of her share therein, was each and every one of them false and fraudulent; that the paper obtained from her, dated June 19, 1865, was obtained from her by fraud, covin, and misrepresentation, on the part of said Hook, and without consideration; that in a short time afterward, said Hook represented to complainant, that although the $5,000 were more than her interest, in said estate, yet if she would in consideration of that sum already paid to her, assign to him any remaining interest of hers, in said estate, he would give up her refunding bond. Impressed with the belief that said Hook was telling the truth, and regarding the proposition as generous on his part, complainant, without any new consideration, signed her mark to a paper, which said Hook presented to her, and which he told her was a transfer to him of any remaining interest she might have in said estate, and received back from him the aforesaid refunding bond, dated June 19, 1865; that said last mentioned paper, which she signed when she got back said refunding bond, the date of which she is unable to give, was obtained by fraud, covin, and mis-

representation, on the part of said Hook, and without consideration.

The bill furthers charges that Hook has paid to the distributees of said Fielding Curtis' estate, the sum of $35,000, and that he, Hook, proposes to retain all the residue of said estate in his hands, not less than $70,000 or $80,000, by means of the fraudulent devices aforesaid.

The bill finally concludes with a prayer for process against Hook and his sureties on his official bond, and prays for special relief; that the transfer of the interest of complainants in the estate to the defendant Hook, may be canceled; that defendants shall account for the property and effects, principal and interest, which came to the hands of said Hook, as administrator; that all credits falsely and fraudulently allowed, may be disallowed; that said settlements with the County Court be restated and corrected; that a decree be made for one-eighth part of the estate unaccounted for in the hands of said administrator, and for general relief.

On the first day of April, 1867, the defendants interposed their demurrer to the bill, and the same having been sustained, the complainants took an appeal from the decree entered upon said demurrer to this Court; and this Court reversed the decree of the Circuit Court, and said cause was remanded to the Circuit Court for further proceedings, in conformity with the opinion of this Court. Said cause on the former appeal will be found reported in 7 Wallace; but the appeal now prosecuted, resting upon other grounds growing out of the subsequent proceedings after the reversal, it is not deemed necessary further to notice the exceptions arising out of the former appeal, which are not pertinent to the errors complained of upon this appeal.

The cause having been remanded to the Circuit Court, Hook, the administrator, filed his answer to the bill, which was adopted by his securities. The answer admits that Fielding Curtis died in February, 1861, intestate and without issue, and that in the same month he, Hook, as public administrator, in obedience to an order of the County Court of Callaway county, took into his possession for the purposes of administration, the estate of Curtis. That he was assisted by two witnesses, who were respectable and disinterested householders of the vicinity of the last abode of the deceased, who accompanied him in the opening and examination of the papers and money of the deceased, and assisted in making an inventory

thereof, and that he did with the assistance of said witnesses, make and return a full, true, perfect, and accurate inventory, of all the goods and chattels, moneys, credits, and effects, which belonged to said estate, and that he filed the same in the County Court of Callaway county, on or about the 25th of February, 1861. That said inventory so made shows the whole of the estate of said Fielding Curtis, so far as the same came to his hands, and so far as he had or has any knowledge thereof. That the statement that there was or came to his hands $15,000 of assetts, which he failed to inventory, is utterly and grossly false and untrue.

That the statement in the bill that he had failed to account on his first settlement for the sum of $20,000, which respondent had received for interest on money of the estate, was utterly and grossly false and untrue; and likewise of each of the other several allegations, of failures to account for like sums of $20,000 for interest, the respondent denied the said allegations specifically. Respondent denied that all the bonds and obligations of the estate as alleged, bore interest at the rate of ten per cent. per annum. Respondent denied that he had collected all the bonds and obligations of the estate, as charged in the bill; that the amount of interest received by him fully and plainly appeared by the accounts by him filed at his annual settlements, with the Callaway County Court, and that no other interest was received by him, than by said settlements charged against him. Respondent denied that he had used the funds of the estate, for his own private gain and speculalation, or that he lent the same at high and usurious interest, and averred that the said several settlements made by him with the Callaway County Court in the years 1862, 1863, 1864, and 1865, and by said Court approved, show the true and correct statement and condition of said estate, both principal and interest; that the rate of interest as fixed by said several settlements with said County Court, was so fixed and determined by said County Court, upon a full manifestation and showing to said court by respondent, of the difficulties attending the investment of moneys, at any rate of interest during the war, and the peculiar and extraordinary emergencies growing out of the war, the unsafety and uncertainty of all investments, the danger of robberies, incident to the possession of money and other valuables. Respondent further denied that the allowances of credits and commissions by said Court to respondent as alleged in the bill, were false or fraudulent. Respondent denied

that the complainant, in the month of June, 1865, was ignorant and uninformed of the nature and value of the estate; that in 1861, in the month of April, after taking possession of said estate and ascertaining the value thereof, the respondent wrote to Abraham Curtis, a letter, informing him of the death of his brother, Fielding Curtis and of the value of the estate which he had left for distribution; and requested said Abraham Curtis to communicate the same to complainant, and others interested in said estate, which said information the said Abraham Curtis did communicate to the complainant, in the month of April, 1861. Thereafter, in consequence of the civil war, and the interruption of intercourse resulting therefrom, it was impossible to give any other information until the termination of hostilities, which occurred in the spring of 1865, and as soon thereafter as he could conveniently go to the State of Virginia, this respondent having filed in the County Court of Callaway county his fourth annual settlement of said estate, he proceeded to the State of Virginia and collected together complainants and others interested in said estate, and laid before them the condition of said estate, with all the information possessed by him concerning the same. The answer further alleges that of the estate of Fielding Curtis coming to his hands as administrator, part consisted of negroes who had been hired out for the year 1861, and the notes for their hire were included in the inventory filed by him of said estate; that the value of these negroes was in a short time entirely destroyed by the war, which spread over the State of Missouri; and that the only sums ever received by respondent as the hire of the said negroes, stood charged against him, in his account presented to and allowed by the Callaway County Court; that of the bonds and obligations for the payment of money, which constituted the principal part of the estate, scarcely any portion was collected or paid in the year 1861; that with no considerable exception the same was paid in the paper of the United States, commonly called legal tender notes, which this respondent in common with others, there being no other circulating medium in common use, received in payment of debts of the estate; that said paper money rapidly depreciated in value; that it became unsafe to keep money or any other valuables in Callaway County in the years 1862, 1863, 1864, and the first of the year 1865, and that in order to secure the property and assets from destruction or loss, this respondent removed the same to St. Louis, Missouri, and kept the same on deposit;

that in the year 1864, becoming alarmed at the rapid depreciation of the paper of the United States, the respondent invested the sum of about $20,000 of the money of said estate received by him, principally in the year 1864, in payment of the bonds and obligations for the payment of money due to the estate of Fielding Curtis, in the purchase of gold coin, upon which there was a loss of over eight thousand dollars, which loss was occasioned by no fraudulent intent to speculate in gold for his own private gain, but to endeavor to save the estate from loss, consequent upon the depreciation of the currency, and this respondent not having the opportunity to loan safely the said funds, and not being able during the rebellion, all intercourse being interdicted, to reach or communicate with complainants and others to pay the same over to them; and having applied to the Callaway County Court for instructions, as to the disposition thereof, and also for authority to lend the same if an opportunity should offer for such loan, and said Court having remitted him to the exercise of his best discretion in the premises, he acted in said investment to the best of his judgment, and with no fraudulent intent whatever, in purchasing said gold, or in performing any other act in the course of said administration. The answer further makes profert of the settlements made by Hook, in the County Court, with an exhibit of the expenses, losses, desperate debts, etc. The answer denies all fraud, either in the settlements or in the purchase of the interest of complainants. It shows that the negotiations for the purchase of the interest of the complainant and others, were carried on deliberately, and the proposition to sell at the sum of $5,000 was made by the complainants; that they secured in conducting said negotiations, their male relatives, John J. Payne, and Peter J. Norris, upon whose advice they relied; who were fully acquainted with the original value of the estate, and that the respondent proposed to them that they, or one of them, should proceed to the State of Missouri to examine into the estate personally, before concluding the purchase. The answer details at great length the transactions of the purchase, as well as all other matters connected with Hook's conduct of the administration; but is too long to be here more fully stated. It put in issue every material allegation of the bill, charging Hook with fraud in the administration of said estate, or in the negotiation of said purchase of complainant's interest.

The three causes of Ann Payne, vs. Zadok Hook, et al; Susan

Curtis, vs. Zadok Hook, et al; and Mary Guinn, vs. Zadok Hook, et al, were consolidated, and come on to be heard at the October term, 1869, of the Circuit Court.

Complainants' evidence consisted of their own depositions, aud the depositions of the two male relatives, who were present and conducted the negotiations, for the release of their interest to Hook in the estate. The testimony of these witnesses, all taken in the State of Virginia, all refers exclusively to the matters pertaining to the said purchases. Also certain depositions taken at Fulton, Callaway county, Mo., showing the value or solvency of certain bonds and mortgages, and other securities belonging to said estate; the rate of interest received by Hook on some of the funds of said estate, as evidenced by notes taken from the debtors of the estate; also, the settlements of said Hook with the Callaway County Court; also, the original inventory of the estate, and the proceedings in the County Court, touching said administration.

The evidence of defendants, consisted of the depositions of Hook and John A. Hockaday, Esq., an attorney, who accompanied Hook to the State of Virginia, in the spring of 1865, and who drew the writings between Hook and the complainants. In these depositions Hook and Hockaday testify fully of all that occurred in Virginia, concerning the releases. The deposition of Hook likewise contained a full and detailed account of his management of the Curtis estate, during the entire administration, showing the losses which it had sustained, the difficulties in its administration growing out of a state of civil war; the difficulties attending the loan of money to solvent borrowers; the danger of keeping money in one's possession or house, and the constant liability to robbery; the continued fluctuation in the finances; also, with a detailed statement of losses and debts.

Upon the hearing, the Circuit Court entered an interlocutory decree setting aside the transfers and relinquishments, and referred the cause to Alexander Martin, esquire, Master *pro hac vice;* to state an account, directing said Master to charge Hook ten per centum per annum interest with annual rests, from the date of the inventory, down to the final hearing of the cause, at the following April term, 1870, without allowing for losses on gold investments, or upon moneys loaned by said Hook of said estate, upon which losses had been sustained.

The Master appointed a day for the hearing of said cause before

him, and thereupon Henry Gambs, public administrator of St. Louis county, having in charge the estate of Abraham Curtis, deceased, and others, distributees of the estate of Fielding Curtis, filed an instrument of writing denominated a statement of facts, in which they also claimed an interest in said estate, as collateral heirs of Fielding Curtis, alleging substantially in said statement of facts, that they likewise had sold their interests to Hook, subsequently to the sale made by the original complainants, and that said transfers were fraudulently procured by said Hook; also averring as in the three original bills, the other matters of alleged fraud in Hook's settlements, and in his failure to account for interest received. The defendants, Hook and his securities, filed an answer excepting to the proceedings by the appearers before the Master, as containing matters alone cognizable before the said Circuit Court, in the exercise of its original jurisdiction, and proceeded to answer said statement of facts so filed in the same manner as is contained in the answer to the original bills. Upon the case thus pending before the Master, depositions were taken in the State of Virginia, upon the subject of these last purchases, and likewise depositions were taken by defendants at Fulton, in Callaway county, of many prominent business men and citizens, tending to show the absolute impossibility of lending money during the war; the dangers incident to having the same in possession, and that investments in gold were considered safest during the war, etc.

Upon a final hearing before the Master, he set aside these purchases, on the ground that the Circuit Court had in the original causes upon like evidence, rendered a decree for complainants, and proceeded to cast up interest with annual rests, at the rate of ten per centum, in accordance with the interlocutory decree, and made report to the April term, 1870, of the Circuit Court, showing the amount which he found to be due each distributee by said calculations of interest. Exceptions were filed before the Master to the report, and also before the Circuit Court. The Court confirmed the Master's report, and entered a final decree against Hook and the other defendants. The defendants also filed a petition for rehearing of the cause, at the April term, 1870, and likewise motions to set aside the interlocutory, and final decree in the cause. In these motions, and pleadings before the Master, and the exceptions to his report, will be found the various errors complained of, which were in substance as follows:

1. That the Circuit Court entered an interlocutory decree, setting aside the transfers to Hook, although it did not appear from any evidence in the case that Hook had been guilty of any fraud, artifice or concealment, in his negotiations for said interests, and although it did not appear that the sum paid, to-wit: $5,000 to each, was not a fair equivalent for the respective interest purchased, and although it appeared further, that the transfers were made at complainants' own voluntary proposition and request, after due deliberation, and that said negotiations were conducted for them by Norris and Payne, their business advisers.

2. Nor was there any evidence in the cause tending to show that their distributive shares were worth a greater amount than the sum of $5,000; the assumed value of the estate being raised and increased by supposing, without evidence, that Hook had received ten per cent. compound interest on the estate, and that said estate ought, in a given number of years, by calculation, to have increased in value a certain amount, without reference to whether interest was actually received upon the entire estate, or any part thereof, or not.

3. Because it appears from the allegations of the bill, as well as from the evidence in the cause, that the complainants resided within the Confederate lines, and that it was impossible as well as unlawful for said administrator, Hook, to pay to complainants their several shares of said estate, and it does not appear from said evidence that said moneys could have been loaned, and it was the duty of said Hook to receive money of said estate from the debtors when tendered, and that he was not a trustee for investment, and that said Callaway County Court being a Court of competent and exclusive jurisdiction, had passed upon his accounts upon the subject of the rate of interest to be charged against him upon the whole estate, as well that bearing interest, as also that which might be in his hands from collections, and unproductive from time to time; nor was there any evidence of loss, either by lending the money of the estate, or by investing in gold, during the war, which showed willful default, or negligence in said Hook, and that said losses resulted from the extraordinary circumstances surrounding him during the existence of the rebellion, and because it does not appear that Hook had failed to account for all interest received by him.

4. Said final decree charges said Hook with the entire amount of the estate, from the date of the inventory, with eight per cent. compound interest thereon, when there is no evidence to show that he could possibly, in the nature of things, have received such an amount of interest, and there is no evidence of the fraudulent or improper use of the funds, or of willful or corrupt management thereof.

5. The decree and report of the Master, charge him with interest on the hire of slaves in advance of the time when said money for hire could have come to his hands.

6. It charges him with compound interest from June, 1865, the date of his purchase, to the rendition of the final decree in the cause, being for the space of five years after his purchase, when, and during which said period, the complainants acquiesced in said purchase, and made no objection to the contracts which were entered into at their own proposition, upon a full and deliberate knowledge of all the facts, being assisted by shrewd business relatives, who advised the sale to Hook. To charge Hook and defendants with eight per cent. compound interest after the date of the sale, for five years, is contrary to equity, even assuming that the evidence showed a fraud upon Hook's part, when, in fact, no such evidence is adduced.

7. The bill of complaints undertakes to surcharge and falsify the settlements of Hook with the Callaway County Court, but no evidence is adduced to impeach the validity thereof. Said settlements are judgments of a Court of competent jurisdiction, and by the laws of Missouri of exclusive jurisdiction over the subject matter, and said settlements are at least *prima facie* evidence in behalf of the defendants, and the burden of proof was upon the complainants to show frand or mistake therein.

8. That the suit against the sureties upon the official bond could not be sustained, until a default on the part of Hook, the principal, to pay over the money found in his hands by the decree, and that to all intents he is still the administrator of said estate, and said administration is still pending in Callaway County, Missouri. Said Hook has no time given him by said decree, to collect the

outstanding assets of said estate, and to comply with the decree of the Circuit Court. Said sureties are only liable on their bond to the extent of the penalty, and a judgment could only be entered in the name of the State of Missouri, upon breaches assigned, said bond being made payable to the State of Missouri, and by statute being suable upon by any one injured by a breach thereof, in the name of the State.

9. Because said securities are not liable to penalties against Hook as a defaulting trustee, even if the evidence snpported the allegations of the bill, nor even if the evidence supported the allegations of the bill that he committed a fraud upon complainants as alleged, would such fraud, so committed in Virginia, render Hook and his securities liable for interest penalties in the administration of said estate in Missouri.

10. Because the Master in Chancery could not legally take cognizance of the cause of action, alleged in the statement of facts, which said cause of action contains the substance of an original bill in equity, arising out the of alleged purchase from appearers, having no connection with the transactions or purchases by Hook of complainants.

11. Because Henry Gambs, administrator of Abraham Curtis, is a citizen of the State of Missouri, and likewise Hook and his securities are citizens of said State, and neither said Master nor said Circuit Court could entertain jurisdiction of said cause of said appearers.

12. Because the complainants being alien enemies, and residing within the lines of the Confederate government, and Hook being a citizen of Missouri residing within the federal lines, during the exist. ence of the civil war all intercourse was interdicted both by positive penal statutes as well as by military law. It being therefore im. possible as well as unlawful for Hook to have any dealings or communication with them during said period, neither he nor the defendants his Sureties are bound to account to them for interest, nor for losses occuring during the war, nor for any rate of interest simple or compound, during said war, upon losses or bad debts.

13. A final decree having been entered in the cause the defendants bring the case here by appeal.

To reverse the decree of the Circuit Court, the following points and authorities are relied upon:

1. The purchases of Hook were valid. There is no rule of law that a trustee may not purchase from the *Cestui qui trust*, the trust property, if there be no concealment or fraud in the transaction. The *cestui qui trusts* were *sui juris;* they were assisted in the negotiations by Payne & Norris. They were fully advised by the letter of Hook to Abraham Curtis, of the value of the estate in 1861. They refused to sell at Hook's offer, and proposed themselves to sell at five thousand dollars to the share, which was accepted by Hook. It does not appear that Hook's statements to them were false in any particular. He was advised by Hockaday, who accompained him to Virginia, to give to the distributees a faithful account of the estate. He was thus aware of the consequences of a false statement. The contract was made under the view, that if compelled to a rigid settlement of the estate without credit for losses, that he would have to account for a larger sum. He puts the compromise or release on the ground, that being a Public Officer, he did during a state of civil war, what his best judgment dictated in the emergencies surrounding him. That it was impossible for the ordinary rules to be adhered to in the investment of money. That he had paid Burnham and Sappington, who lived in Missouri, immediately, because he could reach them; but in consequence of the war, could not reach those in Virginia.—He told them that the estate had suffered heavy losses, and this is fully shown by the evidence. Notwithstanding his desire to relieve himself and securities, he advises them to send some one to Missouri to examine into the estate, before concluding the purchase. That the complainants had a full and fair opportunity to deal intelligently and at arms length with Hook, and that they expected it to be probable that he might realize something upon the suspended debts of the estate is evident from the fact, that they told him after the consummation of the transaction, that upon the purchase he would make ten thousand dollars. There was no haste or precipitancy, but frequent consultations preceding the transactions of the purchase. The evidence in the cause showed that after deducting the expenses of administration, and calculating the usual rate of interest charged against executors and administrators, in times of tranquility, when money could have been lent and if all the estate had been kept at interest all the while, which in a large estate is

never possible, the estate in Hook's hands, even under such favorable circumstances, would not have yielded the vast amount of nterest charged against him by the decree, a *fortiori* during a state of civil war, when there were few solvent borrowers, and money could scarcely be loaned for the mere return of the principal without any interest, when it was dangerous to have been suspected of having money about one's person or premises, when for safety money was buried in the fields, or removed to military posts and deposited in banks for safe keeping, and could not be loaned at all, it must be at once evident that taking into consideration the losses necessarily incident to such an estate, by desperate debts, including the loss on gold investment, whether the latter was justfiable or not, under the extraordinary circumstances, left no surplus in the hands of Hook; but the transaction at best was a release of himself and his securities from a rigid settlement of the estate, in which he would probably have to account for a loss on gold investment, and upon loans made by him, where the real estate had depreciated in value, or where it had been made upon personal security, which became lost in consequence of insolvency. That he had no money of the estate on hand, is shown from the fact that he had to borrow the money, in order to pay complainants. The amount of the estate in 1865 depended upon the amount of accrued interest, from the date of the inventory, actually made by the principal sum during the period, less such losses as might have been sustained and the expenses of administration. Nor does it upon the question of the adequency of the consideration paid complainants signify, whether the losses occurred in strict adherence to the rules of law, in investment by trustees, so far as the validity of the contract is concerned. However the losses may have occurred, the parties dealt upon the basis of an actual estate, reduced by such losses, and with full knowledge of the facts, they deliberately entered in the contract, and have acquiesced in it for five years: and after the administrator in full faith that it was valid and binding, proceeds to take in payment of the debts of the estate, real estate, upon which he recieves no income, yet being subject all the while to heavy taxes and repairs,—they ask a court of equity to set aside the contracts, charge him with the money value of the original security, which no longer bears interest, and obtain a decree, not for the estate, even the whole estate without regard to losses in his hand at the date of the purchase in 1865, but also in addition thereto, 8 per centum per annum compound interest there-

on, down to the rendition of the final decree ; and that too as against the securities, whom it is not pretended are otherwise than perfectly innocent of any wrong. Can it be possible that these, the most stringent rules ever promulgated against a supposed defaulting trustee can be made to apply to the securities on an official bond, who are bound only as "nominated in their bond" to the money recieved by Hook. We insist therefore that it was a case where upon a scrutinizing inspection of the whole transaction, a court of equity could say, that the *cestui qui trust* intended that the trustee should buy ; that there was no ingredient of fraud, undue influence or imbecility, upon the part of the *cestui qui trusts ;* that they were all *sui juris* and made the contracts deliberately ;acquiesced in them for years ; and that, if in any case such contracts are supported, these purchases ought not to be set aside. See the following Authorities upon the validy of such contracts :

Sallee vs Chandler 26 Mo. 124; 16 Iowa 284; 13 Penn. 299,300 ; 18 B Monroe 450 ; 9 Pickering 233,234 ; 33 Mississippi 215,268 ; Law Library 22 vol. 192,193; 9 Vesey 234; 3 Vesey 739,740 ; Adams Equity 216 note 1 Michond vs Girod 4 Howard (U. S.) 556; 8 Humphreys 159 ; Bryan vs Duncan, 11 Georgia 77 ; 9 Barr 279 ; 2 Alabama 571 ; 3 Humphreys 442 ; 2 Dev. Chan. 167,195,329 ; Walk Chan. 267, Hill on trustees 785,786; 2 B Monroe 76 ; Hawley vs Cramer 4 Cowen 719,740 ; 1 Sanford 569, 572 ; 3 Porter 297,325 ; 12 Vesey 355 ; 2 Eden 134 ; 1 Mylne & Keene 195 ; 3 Simmons 42 ; 1 Story's Equity sec. 321 ; 3 Sanford 61 ; 2 Blackford ; 2 Barbour 494 ; 2 Stuart 47 ; 8 Alabama 680 ; 17 Alabama 301 ; Alabama 301 ; 13 ib 381 ; 2 Bro. Chan. R. 400 ; Ark. 59 ; 9 Paige 207 ; Adams Equity 216 and note 1, and authorities.

2. The appearers before the Master sold their interest to Hook long after the sales by the original complainants, and there was no evidence whatever to impeach the validity of these sales for fraud.

3. All the parties have long acquiesced in the validity of the purchases, and the position of the defendants being changed, relief will be denied on this ground. 33 Mississippi, 268 ; Meigs, 175 ; 7 Smedes & Marshall, 420 ; 3 Yerger, 80 ; 8 Paige, 89.

4. The Circuit Court erred in first setting aside, by its interlocutory decree, the releases of complainants, on the ground that Hook

had misrepresented the value of the estate to complainants, when the value of the estate was a necessary ingredient in determining whether the $5,000 paid to each by Hook was less than they would have received upon a final settlement of the estate, and also when the fact of the losses would enter materially into the question of how much each would be entitled to. It was in effect a simple calculation of interest at an exorbitant rate, with annual rests, made upon the losses on gold and desperate debts, upon the whole of the estate, without allowing a day for receiving or paying out money, and by assuming, without proof, but with abundant proof to the contrary, that the funds were bearing the very highest interest during the entire period. The Court, in its interlocutory decree, gave the Master no discretion to inquire into or adjudicate upon losses, but the decree is inexorably severe in its requirements to calculate interest at a certain rate, upon the funds of the estate, taking the inventory as the basis. It appears, by the inventory, that some of the original debts bore but six per cent. interest. No time is allowed for funds on deposit in banks. Interest is charged on losses long after the losses had accrued, at the highest rate. Long after the complainants had sold to Hook their interest in the estate, long after he had taken real estate in payment of bad debts, and he receiving no interest thereon, and on the hire of slaves, before it could have been received by him in the course of administration, at eight per cent. interest, annually compounded. We insist that the Court proceeded *inverse ordine*, and that the investigation of the issues respecting the validity of the purchases, ought to have been deferred until a reference to the Master should have ascertained *the true amount of the estate*, in Hook's hands, at the date of the purchase in June, 1865, in order that the Court should be informed as to the real value of the estate at that time. Such reference, therefore, involved essentially a contradiction of one of the material facts necessary to be found in setting aside the purchases.

5. The entire case of complainants therefore depended upon the amount of estate in Hook's hands, at the date of the purchase in June, 1865. If the sum to which each was entitled was largely in excess of the amount paid to each, Hook was aware of it, and misrepresented the facts, in saying that he could pay in available assets to each heir not exceeding $3,800, at that time. If he had lent the money of the estate, and had not lost any portion of it,

or had received more interest than the amount credited in his settlements, then he was guilty of a fraud. But the question whether the losses would be allowed him, the fact that he was subsequently to be charged as a defaulting trustee, with a high rate of compound interest, on money deposited in bank; and on his loss on gold, and with real estate that he had bought with the suspended debt of the estate, after he became owner, did not at the time of his purchase from complainants, enter into *his* or *their* computation of values. Thus, by subsequently adopted rates of interest, on imaginary values, with annual rests, that which at the time of the purchase was, in fact, true, is made to bear the semblance of a gross and outrageous falsehood. The evidence is overwhelming that money could not be lent during the war; that gold investments were considered by prudent business men as safest; that many regarded United States treasury notes as liable to great and continued depreciation, and like the old Continental money, would become valueless. It is true, that contrary to the experience of all history, and all our preconceived views of finance, the result was different; yet Hook ought not to be held accountable for losses which every business man sustained, where it was unlawful for him to pay it over to complainants, when he had no means of knowing when the war would cease, and being a public official, was compelled to take charge of and manage the estate. Had he failed to take charge of the estate as a public administrator, he would have been just as responsible for losses, as it is claimed he is in this suit. Being, therefore, between two fires, and acting with the best light before him, surrounded with difficulties, managing an estate belonging to alien enemies, during a state of war, the duration of which was uncertain, we insist that he should not be charged with interest in any sum, and especially upon bad debts, and losses, resulting in good faith, from a desire to preserve the estate. Now that the depreciated currency received by him, and loaned and invested in gold and lost, has risen in value nearly to the gold standard, he should be charged, if at all, on losses with only its gold value at the time of investment without interest. The depreciation of values, the unsettling of the finances, was the direct result of the war, and a necessary incident to a state of war. The point, therefore, of our argument, by illustration, is simply this; that if Hook received $1,000 in United States treasury notes, which were at that time worth but $500 in coin, and the same was converted by him into coin, at its current

value in treasury notes, to save the estate from further loss by ation, and not for his own speculation, the fact that after premium on gold became less, or the same amount of treas could afterward have been converted into more gold at a reduced premium, ought not to make him liable for the present standard of value, on the original amount collected.

6. The value of the estate in June, 1865, depending upon the amount of interest received by Hook from 1861 to 1865, or during the existence of the war. The broad question is presented in this case, "have the complainants, being alien enemies, any claim, either at law or in equity, against Hook for interest during said period?" The testimony shows that the money and assets of the estate not being needed for the payment of debts, was subject, under the laws of the State of Missouri, to distribution. The law itself withheld from Hook the power to discharge himself and securities from liability. It did more; it made the payment a penal offence. All intercourse was interdicted. Should he be charged with interest, as is insisted upon, it would present the anomaly of the law itself while punishing payment as an act of disobedience, likewise *flagrante bello*, raising in behalf of an alien enemy an implied assumpsit against its own citizen. The rules in regard to charging interest against trustees, at the rate of interest which the *law implies* from the possession of the funds, where the trustee has failed to keep an exact account of the date of receipt of money and its subsequent disposal, can have no application in favor of an alien enemy. Upon the initiation of hostilities, all rights are suspended, no new obligations can possibly arise during its prevalence, and upon its conclusion the suspended right, as it existed at the inception of the war, is revived, without any superadded incidents or accessions during its continuance. Thus Hook having in his hands the estate, before the beginning of the war, is liable for that estate at its close. Nor is he liable for interest on it, nor for losses accruing thereto, although amid "the clash of arms," he may not have pursued the civil rules laid down for the investment of money. See 1 Peters Circuit Court Reports, 447, 497 and 524; Hoar vs. Allen, 2 Dallas, 702; Foxcraft vs. Galloway, 132; ib. Ward vs. Smith, 7 Wallace, 453; Denniston vs. Imbree, 3 Washington, 396; 15 American Law Register, vol 6, new series, 732; Tucker vs. Watson, ib., 220; Grassmeyers case, 9 Wallace, 72; 2 Black., 635; Mrs. Alex-

ander's Cotton, 2 Wallace, 404; The Venice, 2 Wallace, 258; Mr, Jefferson's letter to Mr. Hammond, 1 American State Papers, 249; Executors of Blake vs. Executors of Quash, 3 McCord, 340; Dickinson vs. Legare, 1 Dessaursure, 537, 542; Davis' administrator, vs. Wright's administrator, 2 Hill, South Carolina Report, 560, 568; Brewer vs. Hastie, 3 Call, 22; Chamberlain vs. Brown, 2 Bland Chancery, 221 note; Christie vs. Hammond, ib., 645 note; Bordley vs. Eden, 3 Harris & McHenry, 167, 4 ib, 161, 5 Call, 133, 8 Cranch, 155, 15 John, 24, 16 John, 438, ib. 510; Vattel Droit, des Gens B 3, chap. 5, sec. 70; Groties De Jur Bel ac Pac, chap. 3, sec. 9, chap. 4, sec. 8, 13 Vesey, 71; Wheat. Int. Law, sec. 305—317, 7 Taunton, 43; Dorsey vs. Kyle, 30 Md., 512; 8 American Law Reg. 334; 8 Chicago Legal News, 26, ib., 82.

7. The Circuit Court, however, erred in applying the rules of interest adopted against Hook, for the reason that the evidence showed that he had received no such rate of interest on the whole estate. He accounted regularly from year to year in his annual settlements for interest, and it is to be assumed as true, that the Court having supervision of the estate, investigated the matters of his accounts. They were apprised of the difficulties attending the lending of money. Judges Johnson, Turner, Bartley, and also Bailey and Nolley, the clerks of the Callaway County Court, whose testimony is found in the record, all show the state of affairs existing during the war, in the locality where the administration was pending. The testimony of a great number of the prominent business men of that locality show the absolute impossibility of lending money at any rate of interest, or even of lending it with an obligation to return the principal free of interest. Money, when a loan could be obtained at all, was never obtained at eight or ten per cent. simple interest. Gold was considered the safest investment—this fact all the witnesses concur in. Taking this testimony as being worthy of belief, we must suppose that the Callaway County Court having jurisdiction over Hook, did charge him upon the whole estate, taking into consideration the necessary time for receiving and paying out money, the difficulties of loaning the money, and all the attendant facts, such rate of interest, as he ought in equity to have been charged with. The settlements stand unimpeached for fraud, and are judgments of a court of competen

jurisdiction, and we claim that *prima facie*, at least in the absence of proof to the contrary, that these settlements must be taken as the best evidence of the amount of money in Hook's hands at the date of Hook's settlement in May, 1865, just previous to his visit to Virginia, when he purchased the estate, or obtained from complainants a release of their shares of the estate, upon payment to each of $5,000. Now, if from this amount so appearing upon his settlement, is taken his losses on gold, his losses on bad debts, which are never credited to the administrator until his final account or settlement, the expenses of administration, including commissions to the administrator, it will be found that the account will stand as follows:

HOOK'S SETTLEMENTS—AS MADE IN COURT.

First settlement—May 20, 1862:

Dr.

To principal of inventory		$62,444 42
To interest on inventory		4094 27
To amount sale bill		24 60
		$66,563 29

Cr.

By vouchers filed	$664 05	
By commission on same	33 20	
		697 25
		$65,866 04
To interest at 6 per cent. on $62,444 42		3,746 64
		$69,612 68

Second settlement—May 20, 1863:

Dr.

To amount due on last settlement		$69,612 68
Hire of slaves		147 50
Interest on $65,000		3,900 00
		$73,660 18

Cr.

By vouchers filed	$ 692 01	
By commission on $1,335.95 at 5 per cent	66 79	
By " on $6,866.49 at 3 per cent	205 99	
By payments to Burnham & Sappington	7,510 43	
		8,475 22
		$65,184 96

Third settlement—May 18, 1864:

Dr.

To amount due on last settlement.....		$65,184 96
To interest received.....		1,460 00
To hire of negroes.....		190 00
		$66,834 96

Cr.

By vouchers.....	$1,088 56	
By "	875 68	
By Sappington.....	261 88	
By commission on $1,350.44 at 3 per cent...	40 51	
By " on $874.68 at 3 per cent.....	26 24	
		$2,292 87
		$64,542 09

Fourth settlement—May 19, 1865:

Dr.

To bal. last settlement.....		$64,542 09
To interest received.....		540 00
		$65,082 09

Cr.

By vouchers filed.....	$ 452 75	
By Sappington, (paid).....	1,000 00	
By commission on $1,452.75 at 3 per cent...	43 58	
		$1,496 33
Amount due on last installment.....		$63,586 73
Add. amounts paid Burnham & Sappington, and interest improperly credited, and now recharged.....		$8,772 31
		$72,359 04
Whole amount received on which commissions may be charged.....		$76,547 43
Commissions 5 per cent. on $76,547.43.....		$3,827 37
Less commissions already charged.....		416 31
Amount due Hook on commissions.....		$3,411 06

Account stated, would be as follows:

Zadok Hook, *Dr.*

To amount due..... $72,359 04

CONTRA.

By balance commissions.....	$3,411 06	
By vouchers not presented, to wit:		
paid to sheriff of Boone Co., May 29, '63	32 15	
paid J. R. Shields, May 23, 1865.....	350 00	

paid U. S. tax collector Sept. 5, 1865.....	163 28	
paid sheriff of Callaway, Nov. 1, 1865.....	600 00	
loss on Cary L Turner note, Sept. 8, '63..	154 53	
loss on Woodson notes June 15, 1865.....	1,369 83	
loss on Nathan Koun's note.....	638 73	
loss on gold May 15, 1865.....	8,184 75	
loss on Bryan, Benton & Bell, Sept. 12, '64,	4,000 00	
loss on John M. Huston, April 20, 1864,	699 00	
loss on John S. Chrisman, June, 1865...	85 00	
		$19,688 33

Whole amount of estate.....$52,670 71

Each share would be $6,583.83⅞.

It will be seen that supposing all outstanding debts to be good excepting actual losses, and charging the administrator with interest during the war as contained in his settlements, and allowing him no interest on moneys invested in gold, and on his other losses, and on credits not contained in his settlements, the highest possible value of the estate could not have exceeded at the date of the purchase, $52,670.71.

The three interests, therefore, would have been worth $19,741.51. For these three interests he paid $15,000. Hence, in case every note of the estate should prove good except those on which he had already lost, or knew he would lose, he could not make on the purchase over $4,750. 50.

Payne and Norris, during the negotiation, in the presence of all the parties, stated that Hook would make in the purchase of the three shares $10,000. How then, are the plaintiffs deceived and defrauded, as they allege?

But we hold that from the date of the proclamation of non-intercourse and blockade of Virginia ports, dated April 27th, 1861, down to the removal of restrictions by proclamation of June 13th, 1865, no interest was properly chargeable against the administrator. Hence, the account against him should be stated as follows, to wit:

Zadok Hook, administrator, etc., to Fielding Curtis' estate:

February 25, 1861.

To amount of inventory.....	$62,444 42
To interest accrued on notes.....	4,094 27
To amount sale bill	24 60
To interest on inventory up to April 27, 1861, say at 10 per cent.....	1,075 43
	$67,638 72

May 20, 1863:	
To hire of slaves	147 50
May 18, 1864:	
To hire of slaves	190 00
	$67,976 22

CONTRA.

May 20, 1862:	
By vouchers filed in first settlement	$664 05
May 20, 1863:	
By vouchers filed in second settlement	692 01
May 18, 1864:	
By vouchers filed in third settlement	1,964 24
May 19, 1865:	
By vouchers filed in fourth settlement	452 75
By commission on $67,976.22 at 5 per cent	3,398 81
By amount paid Boone county sheriff, May 29, 1863	32 15
By amount paid J. R. Shields, attorney, May 23, 1865,	350 00
By amount paid U. S. tax collector, Sept. 5, 1865	163 28
By amount paid sheriff of Callaway Co., Nov. 1865	600 00
By loss on Cary L. Turner note, Sept. 8, 1863	154 53
By loss on Woodson notes, June 15, 1865	1,369 83
By loss on Nathan Koun's note	638 73
By loss on gold, May 15, 1865	8,184 75
By loss on Bryan, Benton & Bell note, Sept. 12, 1864,	4,000 00
By loss on John M. Huston, April 20, 1864	699 00
By loss on John C. Chrisman's note, June 1865	85 00
By balance due the estate	44,527 09
	$67,976 22
June 13, 1855:	
To balance brought down	$44,527 09

It will be seen that at the time Hook settled with the heirs in June 1865, the total value of the estate in his hands, supposing that interest was not chargeable against him during the war, in favor of these plaintiffs, could not exceed $44,527.09. But it will be remembered that at the time of the settlement, he held notes secured by real estate, the value of which, owing to the disturbed condition of the country, he could not determine. Some of these notes may be enumerated, viz: Nathan Koun's, for $2,992.82; John M. Huston's for $2,300; John West's for 4,000; Wm. Hook for $4,000.

In all these cases besides others, he was compelled to advertise and sell the property, and in many cases he sustained heavy losses.

If every dollar of the estate, except losses already suffered o

apparent, had been in his hands, the share of each heir would have been $5,565.88. Hook supposed at the time of the settlement that he would have to pay a legacy tax to the Federal Government. He owed taxes in Callaway, and costs of suit in Boone county. He owed unsettled attorney's fees, and in addition to commission, was entitled to his personal expenses in the administration. He held many notes, the solvency of which was doubtful; and under all the circumstances, we submit that he paid the heirs in Virginia, all that they had any right to expect, and that his statements are not so tainted with fraud as to induce a court of equity to set aside that settlement.

The settlements of Hook not being impeached for fraud, are at least *prima facie* evidence, that he had not a greater amount in his hands, than the sum therein charged against him. They are equally evidence *for* as well as *against* him.

See Picot vs Biddle 35 Mo. 29; 33 Illinois Rep. 219; 4 Halstead 70,77;—These settlements with Hook's own evidence of the losses to which the estate was subjected, and Hook's answer in the cause which challenged investigation without producing any opposing evidence should be considered conclusive against the charges in the bill of a failure to inventory $15.000 of the assets of the estate, and a failure to account for $100.000 of interest, and that he loaned the money at high or usurious rates of interest, as high as 15, 20 and 25 per cents confidently and positively asserted, none of which are sustained by a particle of evidence.

8. Assuming however, that the settlement of Hook has not the force and effect of a judgment; that it is *no evidence* of the amount in his hands at the date of his purchase,—assuming that he is liable for interest on the whole estate even after the purchases for the space of five years, down to the rendition of the final decree in the cause, and that as against Hook and his securities the complainants could, without regard to the length of time they had acquiesced, permitting Hook to deal with the suspended debts as his own, converting the same into real estate at exorbitant prices above their market vauel, yet there is no case which has come under our knowledge, which warrants an imposition upon defendants, of eight or ten per cent. interest with annual rests, without allowing time for receiving or paying out money.—The authorities all concur in declaring that where one has money in his hands *which he ought to have paid over*, he is chargeable with interest. The question turns upon the fault

of the party. If there is a trust to invest, or to receive and pay over, and the trust is not performed, interest is charged against the trustee, and the general rule is to charge for mere neglect, simple interest, on the amount which the trustee has neglected to invest; and only in case of a corrupt use of the money in the business of the trustee, to charge compound interest, or to make annual rests according to the circumstances of the case, in the computation of interest, that being a measure in chancery of the profits not disclosed. A guardian is a trustee to invest or to pay over as the case may be, and is subject to the rule above stated, as to interest simple or compound. But there is manifestly a difference between the case of a guardian and administrator, during the period lawfully allowed to him for the settlement of the estate; it being the duty of the latter to hold the money of the estate ready to be paid over, according to the demands upon the estate. The general rule is now established that administrators or exectors, are not chargeable with interest, except where they have received interest, or use the money, or retain it unreasonably after they ought to pay it out to claimants, or to account to the Court.

9 Pickering R., 369,386; 2 J. J. Marshall, 195, 202; 6 Dana 3—5; Boynton vs Dyre, 18 Pickering, 2—7; 1 American Leading Cases, 363;

13 Mass., 232; 1 Pick., 530; 18 Pick., 2—7; 4 Metcalf, 317,324; 4 Halstead, 70,77; 6 Halstead, 145; 4 Harrison, 109; 3 Dessausure, 241; 7 Yerger, 173; 41 Penn., 500; 5 Rawle, 334; 16 Howard, 535; 45 Barbour, 182; 14 Missouri, 116;—

Administrators are allowed a reasonable time to get in the estate, and even when chargeable with interest on money received, a reasonable time for its collection is given for investment. Therick's estate, 1 Ashmead, 305; 18 Pickering, 2—8.

An administrator may show that money lay idle in his hands, or that he actually received not exceeding a certain sum, and as against a distributee, that no demand was made and that he has not used the money.

6 Watts, 379; 7 Harris & Johnson, 43—46; 6 J. J. Marshall, 94,99; 4 Dana, 138; 3 Munford, 198; 9 Vermont. 42,82; 1 Grattan, 292; 1 Hopkins, 424; 6 Halstead, 159.

The current of authority is decidedly against the allowance of compound interest in any case. The case of Shieflin vs Stewart, 1 John. Chan. Rep. 620, is the foundation of the doctrine of compound interest in this country, but it even is no authority for charging ten per cent. interest on balances. Chancellor Kent in this case decides that interest will be compounded where the trustee is guilty of gross delinquency, or mingles the trust property with his own *for his own benefit*, or employs it in trade, or otherwise so uses funds, as *to justify the belief* that he has *actually* earned interest upon interest. In that case the defendant had notoriously speculated with the funds of the estate, by investment in stocks, and in the purchase and dealing in merchandize on his own account; but even in this case the defendant was allowed from September 8th, 1803, the date of his letters, to the 6th of July, 1805, the date of receiving the last large debt due the estate, before he was charged with any interest at all, and *then only with the legal rate of interest allowed on deferred demands.*

It has been repeatedly held that mere neglect to invest the money, or a mistaken or improper investment without gross delinquency or corruption, does not justify compound interest. 13 E. L. & E., 304; 9 ib 69; 1 Ashmead, 57; 2 Rawle, 305; 5 Rawle, 325; 7 Seargent & Rawle, 264; 5 Barr, 87.

Merely mingling the trust money with that of the trustee, is not sufficient to charge him with compound interest. 1 Hopk: Ch. 424; 11 Barbour, 353; 1 Pick. 527.—

There is no case in the books, so far as a diligent investigation could discover, which warrants the imposition of interest against any kind of trustee, from *the date of the receipt of the money.* In 1 Ashmead, 304; six mos. was allowed, in 2 Wendell, 77; six mos. was allowed. Fox vs Wilcox, 1 Binney, page 194, the adm. was allowed twelve months, so in the case of Boynton & Dyer, 18 Pickering.

See also upon the subject of interest, the following authorities: 7 Yerger, 214; 33 Ill. 21; 2 McCord's, Ch. 185; 2 Kent Com. 231, note C. Harland's account, 5 Rawle; 14 Illinois, page 1; Hill on Trustees, page 374 and note 2 American Edition, where the doctrine in 1st. Johnson Chancery Rep. is considered too broad—27 Mo. Rep. 544.

Revised Statute of Mo. 1855, page 137, § 51, reads as follows: "All interest received by executors and administrators on debts

due to the deceased, shall be assets in their hands, and if they lend the money of the deceased, or use it for their own private purpose, they shall pay interest thereon to the estate, § 52." "The County Court shall, at each settlement, exercise an equitable control in making executors and administrators account for interest received by them, on debts due the estate, and for interest accruing on money belonging to the estate loaned or otherwise employed by them, and for that purpose may take testimony, or examine the administrator on oath." We assume, therefore, that under the ordinary rule, applicable to cases where the administrator could not lend the money of the estate, or had used it, that he would be chargeable with the highest legal rate of interest in Missouri, and not upon the conventional rate of eight or ten per cent., the highest legal rate of interest being six per cent., but parties may contract for ten per cent. per annum.

Under this rule, the value of the estate in May, 1865, calculating six per cent. interest, and allowing six months for receiving and paying out money, would reduce the rate of interest below that charged by the Callaway County Court in Hook's settlements.

On the subject of interest, we, therefore, insist that the Circuit Court erred.

a. In casting up interest with annual rests at the rate of eight per cent. per annum, during the period covered by the war.

b. In casting aside and disregarding the rate of interest fixed by the Callaway County Court, in its settlements with Hook, said Court having the unquestioned power to pass upon the subject of interest, and to make an equitable adjustment thereof upon the whole estate, without reference to what special rate of interest some of the funds of said estate, might be for a time bearing. Their judgment in the premises was valid, and could not be set aside, except for fraud.

c. In imposing upon Hook a conventional rate of interest, at eight per centum, with annual rests, when it was shown that money could not be loaned at the legal rate, six per cent. simple interest.

d. In allowing no time to Hook, in said calculation, for receiving and paying out the moneys of the estate.

e. In calculating interest at eight per cent. per annum, with annual rests, on the whole estate, without intermission, from the date of the inventory to the final decree, thereby casting up interest at a conventional rate on losses, long after said losses had accrued.

f. In charging Hook with the losses, and interest thereon, after the losses had accrued.

g. In charging eight per cent. interest on the whole inventory, when it plainly appeared that some of the notes of the original estate bore but six per cent., also upon the cash in the inventory, also upon the hire of slaves, not due for twelve months after the date of the inventory, also on the sale bill of personalty.

h. In casting up interest against Hook, after the purchase in June, 1865, down to April, 1870, being nearly the space of five years thereafter, at the rate of eight per centum per annum compound interest, when it is shown by the evidence, that Hook, in full faith of the validity of his purchase, had converted the suspended debt into real estate, at a price far above its real value, when and during which said time the complainants acquiesced in the validity of said purchases, and to the detriment of said Hook, and *a fortiori* to the detriment of his securities, they permitted Hook to deal with the estate in such a manner as he would not otherwise have done. It is, therefore, a great hardship to charge him and his securities with any rate of interest, after the date of the purchase, the said real estate bearing no interest, but on the contrary being subject to repairs and taxes, and unavailable, as shown by the evidence.

9. We do not affirm that in a case where peace and financial prosperity pervaded the country, where money could be lent on stable securities, without fluctuations in commercial and financial values, where public confidence was unimpaired in the circulating medium, and business was in a normal condition, that an executor, or other trustee, could invest in gold, even in good faith, for the benefit of the estate. But we do insist that a court of equity, in adjusting the accounts of a trustee, can look into the circumstances surrounding each particular case, and that no rigid abstract rules will be adopted, as governing all cases, without reference to the peculiar circumstances of each. The object of the rule is to impose a penalty on willful default and negligence. The difference in gold and silver coin, in its purchasing value, was recognized by the government during the war; and the government itself has gone into the market, and exchanged its gold for paper currency, at the ruling rate of discount. The true value of the currency was, and will ever be, regulated by the gold standard. Hence, while nominally speaking, one dollar in gold, and one dollar in currency repre-

sented, and yet represent each one hundred cents—practically there was and is, in the purchasing power of each, a difference. If at the time that Hook received $23,000 of the estate, gold and currency were of the relative value of two dollars for one, and there was a tendency to further depreciation, which he honestly believed would be the result, did he by simply converting the $23,000 in currency into its exchangeable value in coin, commit a breach of trust, when it was the only gold transaction he ever was concerned in, and when it appears that it was not done for speculation, but from an honest conviction that he would thereby preserve the estate from loss, being supported in his judgment by the acts and opinions of the most prudent business men, in the community where he lived. If he was guilty of a breach of trust, then what ought he to be charged with? The amount which the currency was worth at the time of its reception, or investment, or its value in 1865 or 1870, after the close of the war, after public confidence was reassured of the stability and permanency of our institutions, and the finances had resumed a normal condition? Will equity not take cognizance of the direct and immediate consequences, and results, of a gigantic civil war, so far, at least, as to adjust the rules of private right, in such manner as not to visit its effects upon the individual citizen, and thereby hold him bound in his conduct, to the same rule, as in times of tranquillity. It is clear that if the $23,000 in currency had become valueless by depreciation, he would have been responsible for the gold purchased, and not for the nominal dollars of currency received by him Why, then, while acting in good faith, and fearing a total loss, and not being able to lend the money, should he in equity be charged *with more than the value of the money by its gold standard* at the time of investment? And why charge him, not only with its subsequent increased value, *but also compound interest on the increased value, upon the subject matter that had, in* 1865, *no real existence, and was purely ideal and imaginary?* Hook's own oath was the proper evidence of the loss, the letters of Allen, Copp & Nisbet, in connection with the purchase and sale of the gold, are appended to Hook's deposition, showing the entire transaction. 2 Story's Equity, §1,269; Morley vs. Morley, 2 chancery cases 2; 3 Atk., 1 Dick., Rep. 120, 127; 2 vesey 240, 2 Fonblanque Equity, 475, Book 2, chap. 7, Sec. 4, Sec. 6, note 1; 4 Henning & Munford, 416. As to error in judgment exercised by trustees, See 2 Spence's Equitable Jurisdiction,

932, 936. Courts of Equity do not charge trustees with imaginary values, or with more than they receive, unless there is proof of corruption and supine negligence. Osgood vs. Franklin, 2 John Chancery, Rep. 1; same case, 14 John, 527; 6 Johnson Chancery, Rep. 67; 1 Johnson Chancery Reports, 37; 1 Mon 151. The complaint in this case is, in one respect, for violating the trust in lending and losing some of the money, and for violating the trust in not lending, but converting some of the money into gold coin, thereby holding him responsible for an error of judgment either way. Kerr's executors vs. Kerr's creditors, 2 Grattan, 128** at bottom of page; Calhoun's estate, 6 Watts, 188; 4 John Chancery cases, 627; 4 Jones' Eq. (N. C.) 32. When a trustee has acted in good faith, in the exercise of a fair discretion, and in the same manner as he would ordinarily do, in regard to his own property, he ought not to be held responsible for any losses accruing in the management of the trust estate. Gray vs. Lynch, 8 Gill, 403; 2 Story Equity, Sec. 1,269, also note 1 and authorities. The spirit and theory of the case presents itself in the simple proposition: that if Hook's error in judgment had proved beneficial to the estate, his act would have been approved, and the distributees would have received the value of the money at the time of the investment; but unfortunately, however] honest in his belief of that result, which would have rendered the investment judicious and acceptable, they claim now the full present value of the currency, with compound interest thereon, from date of investment, simply because he erred in his judgment in times of great public peril, when everything was in the greatest disorder and confusion, and not even the Court supervising his accounts, would undertake to advise him how to act.

10. The Circuit Court erred in entertaining jurisdiction of the cause of action arising out of the dealings between Hook and those parties, who filed a statement of facts before the Master. The subject matter of the statement of facts, contained the substance of an original bill in equity, upon which the Master in Chancery, not being clothed with judicial power, could not adjudicate. The rights of the parties growing out of those subsequent transfers, being passed upon by him, such proceedings were *coram non judice*. Said causes of action were cognizable by the Circuit Court, in the exercise of its original chancery jurisdiction, upon bill and answer, according to the usual course of proceeding. To tack these causes upon another, and submit them to the adjudication

of its ministerial officer, was not only irregular, but absolutely without authority of law.

11. Even if it were proper that the rights of said appearers should thus have been adjudicated in this informal way, yet there was an insuperable objection to the court obtaining jurisdiction of the cause of Henry Gambs, public administrator of St. Louis county, against Hook and his securities, they being all residents of the State of Missouri. 16 Peters, 315; 5 Howard, 278; Abbott's Practice, vol. 1, p. 305.

12. While the securities were properly parties to the proceeding, so far as they had an interest in the accounts of the trustee, being ultimately liable upon the breaches assigned in a suit upon a bond, yet the Court erred in rendering a decree for the balance against them. The bond is executed to the State of Missouri, and they were solely liable upon the bond in a common law action upon breaches assigned, when a judgment for the entire penalty would be entered, with an award of execution for single damages assessed. After the Court had found by its decree, that Hook should account for a given sum, not being removed by the decree from his office as administrator, if such decree were permissible, and by the appointment of a successor in the administration to collect and preserve the estate, until he had failed to pay over under the order or decree of the Court, no breach of the bond occurred, because the funds were in the proper custody of Hook, the administrator of the estate. If the securities are liable only on the bond, no judgment could be rendered except upon alleged breaches of the bond, duly assigned and proved.

13. We conclude by referring to the supposed evidences, and allegations of fraud, charged against Hook.

As an evidence of fraud, it is alleged that Hook represented that the estate was not worth exceeding $3,800 to the share; and yet kindly offered in the same breath to pay complainants each $1,200 more than their interests in the estate were severally worth. This allegation in the bill is not supported by the proofs, and the statement upon its face bears with it its own refutation, simply giving to Hook and complainants the most common perception. It was in this form, a proposition that Hook designing a fraud would never

have made, for the proposition naturally would suggest the enquiry, "why offer to give away to each, out of his (Hook's) own funds $1,200, in order to get them to consent each to take the $3,800?" Such a proposition would have alarmed the suspicions of the complainants and their advisers, and would have put an end to the negotiations.

The evidence in the cause, however, shows no such foolish or silly proposition. It shows that Hook said that he could *then collect and pay out* of the available assets of the estate $3,800 to each share. This proposition they refused to accept, but they proposed that if he would pay them $4,000 each, they would be satisfied with it. This Hook refused to do, and they then proposed if he would pay them $5,000 each, that they would release him and turn over to him their interest in the estate. This Hook refused to accept, but qualifiedly. He agrees to accept their proposition if they will execute to him a refunding bond, for the sum of $1,200 each, binding themselves to refund to him, so much of the $1,200 as he should fail to realize out of the suspended debt of the estate. Now if there had been a design upon the part of Hook, to perpetrate a fraud, in taking this refunding bond on the payment of $5,000 to each of complainants, how much more securely could he have effected the purchase and saved money, by paying each $4,000, a proposition he had refused, without such refunding bond. But the idea with complainants was for a present settlement, and collection of their respective shares, rather than wait the process of collection of the estate, and that Hook should raise the money for that purpose, which he did by burdening himself with a large debt, as shown by the evidence. The design in taking the refunding bond on Hook's part, was, that if he failed to settle with the other heirs, on the basis of $5,000 with like refunding bonds, and their turning over the estate to his full management should he fail to reimburse himself out of the estate, that his payment to these heirs of $5,000 absolutely, or $4,000 absolutely, would be a showing on the whole seven shares of the estate, good and available assets to the amount of $8,400, which he did not know would be realized, and which on final settlement might be allowed him, without any present settlement with the distributees. If he could by seeing the distributors in person, and by personal exertion raise the money to pay them off *then*, and by taking real estate in payment of its suspended debt, which he could deal with at his own discretion, he might

thus save himself and securities from financial ruin. How the taking of their refunding bonds can be by the utmost ingenuity tortured into a fraud, we can not imagine.

It is complained as fraudulent, that Hook kept no account of loans and interest made upon the estate, and that he failed to keep the moneys of the estate separate from his own. Mere negligence in keeping accurate accounts, is not corrupt dealing with the funds of an estate. If an administrator fails to make an exact showing of the date of collection of money, and its investment or subsequent collection or re-investment, there is no presumption of *mala fides*, if he has made regular annual settlements before a court armed with authority to imprison him for contempt for a failure to account, and the accounts of administrators in Missouri consists simply of their vouchers presented on settlement, and the rate of interest is fixed upon such equitable basis as the Court may adopt upon the whole balance in his hands, taking into consideration that he is unlike a trustee for investment, receiving and paying out moneys ranging from very small to very large amounts, and it would be to a great extent impracticable to calculate interest on specific amounts for or against him, according to receipts and payments. It would be equally impracticable for a public administrator to keep in bank forty or fifty separate accounts of the various estates under his control, and unless such mingling the money with other moneys is done for the purpose of fraud, it does not subject the administrator to the penalties of malfeasance, especially where the money so kept is on special deposit and is not entered on a pass-book. We hardly think there is an administration now pending in the United States, where it is usual to keep exact accounts like ordinary trustees, excepting as required upon annual settlement, with the proper ordinary or probate court. The case of an administrator is so different from that of a trustee for investment, that the rules applicable to the latter cannot be applied in this country without producing harshness, in view of the uniform practice of administrators, who keep their accounts on settlement with vouchers before the respective courts.

It is charged in the bill that Hook induced complainants to believe that he was paying them the full amount of their interest and $1200 in excess.

The evidence shows that they were apprised of the letter written by Hook in 1861 to Abraham Curtis, in which he told him, that

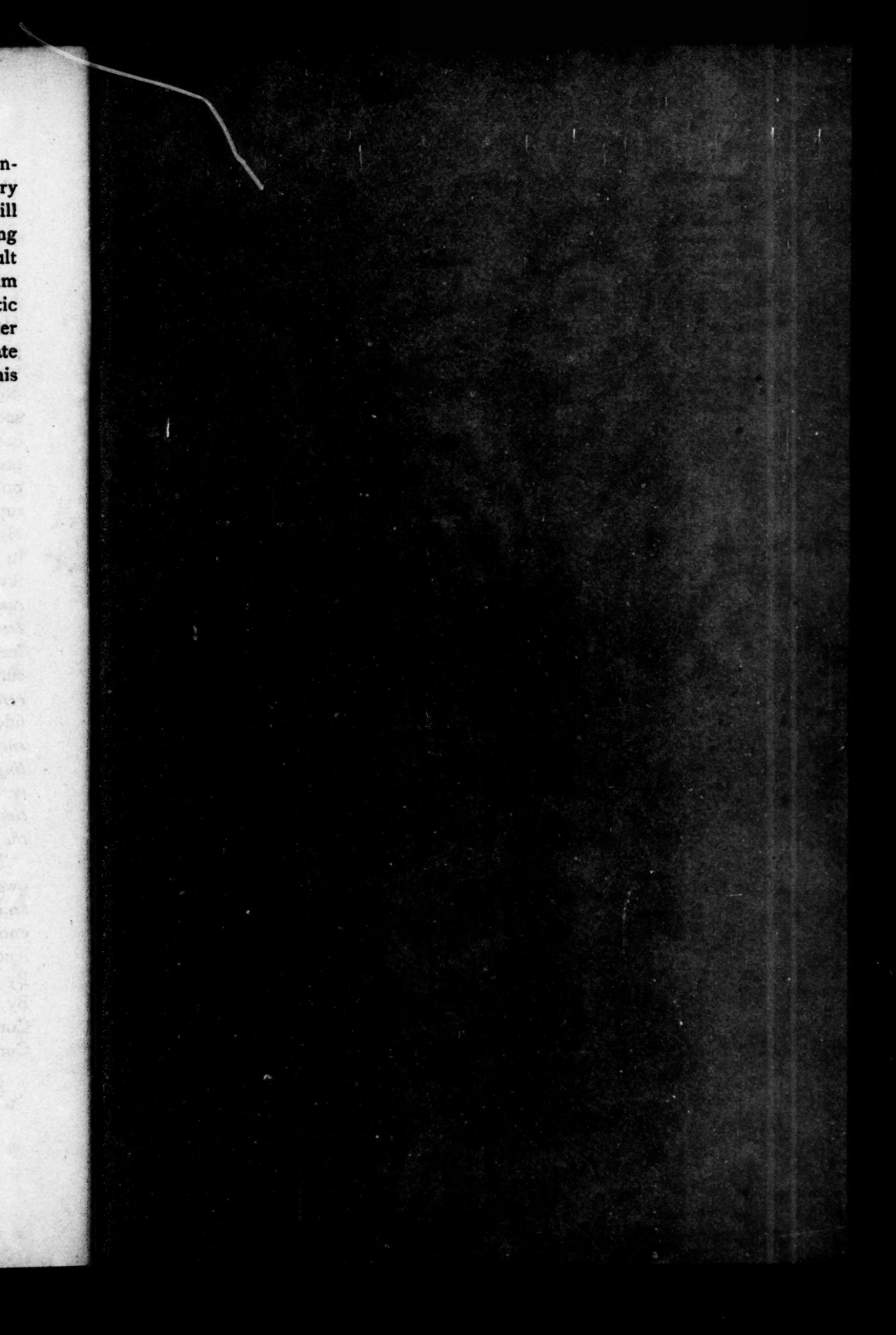
the estate was worth $66,000, and that it consisted chiefly of bonds and notes, which were good. With this basis for calculation at 6, at 8, at 10 or as the bill alleges, at 12 or 15, or 20 or 25 per cent. interest, they could as well as Hook form their own estimate of the accumulations. As regards the amount of the estate in Hook's hands at the date of the settlement in May 1865, they declared that Hook was making $10.000 by the purchase of those three shares alone, and at this rate of calculation they must have supposed, that upon the whole estate he would realize some twenty-five thousand dollars, assuming the entire estate to be good, and solvent, if he succeeded in purchasing the other interests. They could not then have been misled or mistaken, nor were they overreached by any pretence of want of information or because the complainants could not read and write:—Hook was a stranger to them, and it is not supposed that they would rely upon his statements too implicitly. He gave them all the information he possessed, and as the evidence in the Hockaday deposition will show, that he desired Hockaday to reveal upon his deposition *everything that had been spoken by him confidentially or otherwise, on the trip to Virginia and while there concerning his views and plans of settlement*, with the Curtis heirs. He further told them the true condition of the estate, that it had suffered heavy losses, etc. and *for them to go or send to Missouri before closing the settlement with him.* And we think we may confidently affirm, that *not one solitary representation made by Hook; is shown to be false*, and the whole case of fraud is made up *from swelling the estate to immense proportions by heavy interest with annual rests and by ignoring the bad debts and losses on gold, and at the same time, calculating thereon, a heavy rate of interest up to the very date of the final decree in April* 1870.

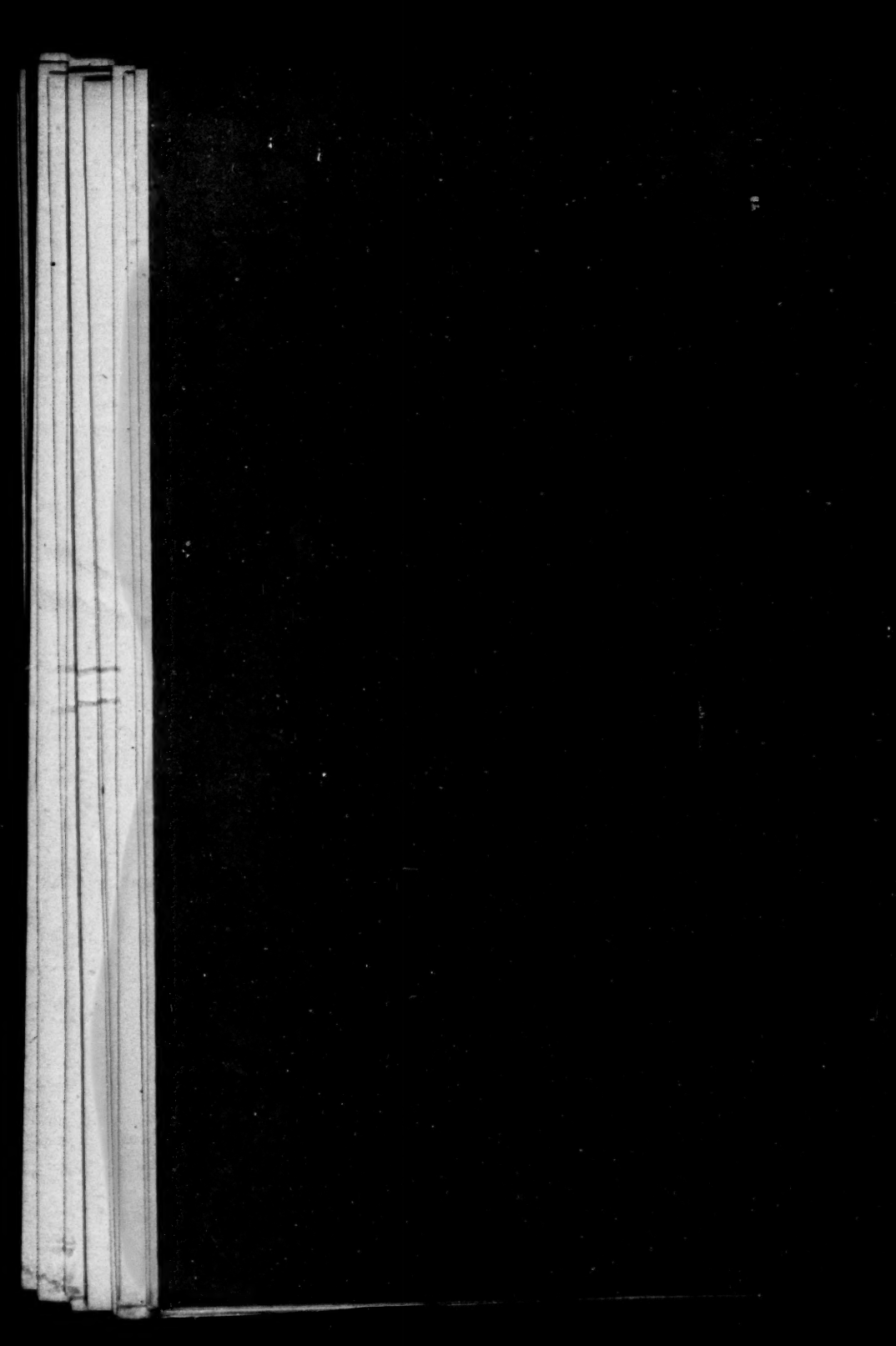
The master's report ascertains the estate in Hook's hands, as follows, beginning with the original amount of the estate in 1861—with an estate or principal sum of $62.444.42, he is charged with the enormous sum of..... .....$149,199 69.

And credited by uncollectable debts only	$2,454 13	
By difference in interest.....	$382 66	
By payments to distributees.....	$71,653 10	
Commissions on payments	$2,509.70	
Commissions to be yet deducted.....	$3,610 00	
		—$80,609 59
Balance due.....		$68,590 10

Thus it appears by interest calculations, that Hook after commencing with an estate of the principal sum of $62,000 in February 1861, after being credited with the large sum of $80,000, is still left in debt the enormous sum of *sixty-eight thousand dollars*, being several thousand dollars in excess of the original estate. This result could only have been attained by compounding interest against him on the whole estate for four years, during the existence of a gigantic civil war, and by carrying the calculation forward for five years after the date of his purchase, long after the suspended debt of the estate had been converted into real estate in the faith of the validity of his purchase.

J. P. Henderson
for appts





Supreme Court of the United States.

DECEMBER TERM, 1871.

ZADOK HOOK AND OTHERS, Appellants,

vs.

ANN PAYNE AND OTHERS, Appellees.

STATEMENT FOR APPELLEES.

The appellees, Ann Payne, Mary Gwinn, and Susan Curtis, heirs and distributees of Fielding Curtis, deceased, commenced separate suits in chancery, in United States circuit court for the districts of Missouri.

These suits were consolidated and tried as one.

The bills alleged that Hook was public administrator of Colloway county, Missouri, and gave bond as such, with the other appellants as his sureties; and took into his possession the estate of said decedant, returned his inventory thereof in March 1861, showing funds and notes and personal effects in amount of $66,538. That he made four annual settlements with the county court, to wit: in 1862, 1863, 1864, and 1865, after which he rendered no accounts to the county court. That nearly all the bonds and notes belonging to the estate bore ten per cent interest, which was collected by Hook, who failed to charge himself with the interest received. That he had used the money of the estate for his private gain: in trade, speculation, buying and selling gold coin, shaving paper, and loaning it at high and usurious interest.

That the distributees were ignorant of the value of the estate in his hands when he came to Virginia in June, 1865, and represented one eighth of the estate to be worth only about $3,800;

that by fraud and imposition he induced the plaintiffs to accept $5,000 each in satisfaction of their shares, the estate being worth nearly twice that amount. That he paid to Ann Burnham, whose interest was only one sixteenth of the estate, and who resided in Missouri, $4,341.65 in part of her share in 1861. That he refused to account for the balance in his hands. Hook answered the bill, but rendered no account, and dealt mostly in generalities, like these, "large amounts," "considerable portions," "many bonds," "a great many," "very little," &c., when positive information was called for. His deposition was taken in his own favor, and was unspecific as his answer—he could not tell when he made collections, nor in what amounts, "paid no particular attention," he loaned the money "from time to time," his "general rule" was to "have ten per cent per annum compounded" annually, if not paid, and little else could be learned from his examination on oath, to whom he loaned, what amounts, when collected, and how long he kept the money on hand, or when he re-loaned, he would give no information. He said, he kept no accounts by which he could answer these questions. He admitted he deposited the trust money with bankers Allen, Copp, and Nisbet, of St. Louis; Tucker & Co., and the Western Bank, of Fulton, Calloway county, Missouri, but refused to show these accounts or produce his deposit books, because, he said, his private funds were mixed up in these accounts; *but to what amount he could not remember.* His loans and deposits of the estate's money were in the name of Zadok Hook simply, and not as administrator, excepting one loan only to Kouns. After admitting his general rule was to loan at ten per cent compounded annually, he attempted to prove by sundry witnesses that in their opinion money could not be loaned at all. The testimony cannot be abridged. That the settlements were fraudulently procured by Hook, both on account of concealment and misrepresentation, is palpable.

The court set aside his acquittances, and ordered him to account before a master; on the basis of ten per cent. interest compounded with annual rests.

The master's report was made, showing $52,463 62 due

to the plaintiffs and the other distributees, who appeared before the master and proved their claims, under the order of the court. (See master's report, record pp. 36 to 46, inclusive.)

Subsequently the court modified the interlocutory decree by reducing the annual interest to eight per cent., and entered a final decree for $44,873.35.

(Record, p. 61.) This reduction was kind to Mr. Hook; as was, also, the order of the court, allowing him full commissions, $6,119.70, (Record, p. 42,) not only on what he paid, but, also, on what he had refused to pay.

Points and authorities for the respondents, Ann Payne and others.

(1.) When an administrator or trustee mixes up his own money with that of the trust, or uses it, or lends it, and is not ready to pay when he should, he shall pay interest on the principal, and if he invests, or deposits, the trust moneys in his own name, without describing it in some way as property of the trust, he shall account for any loss that happens. 11 Paige, 142, Jacott *vs.* Emmett; 8 Gill & John, 218, Jenkins *vs.* Walter; 2 Barb. Ch., 211, Speor *vs.* Tenkhom; 7 B. Mon., 171, Clemens *vs.* Caldwell; 8 Iredell, 286, Swindal *vs.* Swindal; 8 Barr, 431, Stanley's Estate; 3 Barr, 323, Morns *vs.* Wallace; 4 Casey, 480, Com. *vs.* McCollister.

(2.) When an administrator, or trustee, loans, invests, deposits, or uses the trust funds, and fails to disclose the uses, or amount of interest, or profit, received, he shall be charged with the *highest rate*, and rests made in the account upon the presumption that he received compound interest. 7 B. Mon. 171, Clemens *vs* Caldwell; 5 Dana, 70, Moore *vs.* Beauchamp; 8 Iredell, 286, Swindall *vs.* Swindall; 11 Paige, 520, Utica Ins. Co. *vs.* Lynch; 10 Pick, 104, Jamison *vs.* Hopgood; 2 Maryl. Ch. 219, Bentley *vs.* Shreeve; 16 How., Barney *vs.* Saunders. Ten per cent. is the highest rate of interest in Missouri. R. S. 1865 and 1855, Title—Interest.

(3.) The statute of Missouri is in these words, "all interest received by executors, or administrators, on debts due deceased, shall be assets in their hands, and if they lend the money of the deceased, or use it for their own private purposes, they shall pay interest to the estate. R. S. 1865, p. 493, § 51; R. S. 1855, p. 137, §§ 51 and 52. The statute of Missouri determines the period of rest by requiring the administrator, or executor, to charge himself with accruing interest at every settlement, that is, at the end of each year, R. S. 1865, p. 493, § 55, and page 505, § 2; R. S. 1855, p. 159, and p. 157, §§ 51 and 52.

(4.) An administrator, or executor, who lends on bond, note, or any personal security, commits a breach of trust, and is personally responsible for the transaction. 2 Williams' Executors, p. 1,539; 1 Cox R. 24, Adye *vs.* Templeton; 3 Swonston, 63, Walker *vs.* Symonds; Saxton, 259, Gray *vs.* Fox; 4 I. Ch. 281, Smith *vs.* Smith; 18 Pa. St. R. 303, Hemphill's appeal; 23 Pa. St. R. 44, Worrell's appeal; 4 Barb. 626, Ackerman *vs.* Emott; 4 Florida, 112, Moore *vs.* Hamilton. A loan should not exceed two-thirds of the value of the security. 1 Mylne & Craig, 8, Stickney *vs.* Sewell; 4 Edwards, 718, 723, Bogart *vs.* Van Velsor. Mr. Hook does not claim a credit for the losses on gold; he merely thinks he is entitled to sympathy. (See his answer, record p. 18.)

(5.) The failure to collect certain debts was the result of negligence. No diligence is shown. Letting money stand out on personal security, is negligence, which makes a trustee personally responsible. 2 Maryland Ch. 219, Bentley *vs.* Shreeve; 4 Florida, 112, 118, Moore *vs.* Hamilton; 14 I. R. 446, Ruggles *vs.* Sherman; 11 Wend. 361, Shultz *vs.* Pulver.

(6.) The releases to Hook were void. 4 How. 556, Michoud *vs.* Girod; Id. 561; 5 Ala. p. 90; 1 White & Tudors, Lead. Cases in Eq. top p. 220; 43 Mo. 162, Thornton *vs.* Irwin, 4 Dessaus, 652, Butler *vs.* Haskell, 1 Hill Ch. 390, Farr *vs.* Farr; 3 Paige, 377, Ball *vs.* Gardner; 1 Sandf. Ch., 570, Porlan *vs.*

Martin; 9 Pick, 212, Farnham *vs.* Brooks. The burthen of proof was on Mr. Hook to show he made full and fair disclosures, and acted perfectly conscientiously; but he seemed to think he should deny everything, and call for proof. Hook's answer was not evidence. 4 Paige, 368, Smith *vs.* Clark.

(7.) The interlocutory decree directed the master to inquire and report who were the other distributees of said estate, what payment have been made to them, and what was due to them. (Record, p. 25.)

The proceedings in the master's office were in accordance with the ordinary practice in such cases. The distributees, not originally parties to the suit, appeared and filed a statement of facts, which was answered by the defendants, and proofs heard. (See 2 Daniel Ch. Pl. and Practice, Perkins' ed., title "Proceedings in the Master's Office, pp. 1175, 1193, 1200, 1201, 1205 to 1220 inclusive; 2 Ich., 495, Remsen *vs.* Remsen.)

There is no pretence that the appearers before the master did not make a satisfactory and sufficient statement of facts. No plea of surprise is set up. It is only said they had no right to appear. (2 Hogan, 144, Crone *vs.* O'Dell.) The exceptions to the master's report were too general. (See Record, p. 55.) The defendants say, they object to the general balances. They say, "the decree is illegal and unjust." These are no legal exceptions. (13 Peters, 359, Story *vs.* Livingston.) And no exceptions to the master's report which was not preferred to him could be heard in court.

GLOVER & SHEPLEY,
for Appellees.

No interest during war —

If interest — what interest — 6 per cent by law of State —

Perry on Trusts —

No. 158.

Supreme Court of the United States.

DECEMBER TERM, 1871.

ZADOK HOOK AND OTHERS, APPELLANTS,

vs.

ANN PAYNE AND OTHERS, RESPONDENTS.

J. B. HENDERSON, *for Appellants.*

Judd & Detweiler, Printers, corner Pa. ave. and 11th st., Washington.

Supreme Court of the United States.

DECEMBER TERM, 1871.

ZADOK HOOK AND OTHERS, APPELLANTS,

vs.

ANN PAYNE AND OTHERS, RESPONDENTS.

In February, 1861, one Fielding Curtis, died intestate in Callaway county, Missouri, leaving eight brothers and sisters or their children, (some of the brothers and sisters having died,) his only heirs. Seven of these persons or descendants lived outside of Missouri. The descendants of one of the brothers resided in Missouri. Zadok Hook was at the time public administrator of said county, and the county court charged with probate jurisdiction, ordered the estate of Curtis into his hands to be administered. He took charge of the estate, and filed an inventory. It consisted of a small amount of money, but a considerable amount of notes and bonds, the larger part of which was drawing simple interest at ten per cent per annum. There were a few slaves; but they soon became valueless because of the war, and were finally liberated by the laws of the State. This inventory was filed on March 30, 1861, and showed the notes, including the small sum of money on hand, to amount to $62,444 42, with an additional sum of $4,094 27 of interest then accrued on the notes. The entire sale bill amounted to only $24.60.

A few days after this inventory was filed civil war became flagrant in the State, and within a month from that date the two proclamations of the President, dated respectively

April 27 and April 30, 1861, closed all intercourse between Missouri and the State of Virginia. The laws of Missouri in reference to settlements of estates are as follows:

"The court shall at each settlement exercise an equitable control in making executors and administrators account for interest received by them on debts due the estate and for interest accruing on money belonging to the estate, loaned or otherwise employed by them; and for that purpose may take testimony, or examine the executor or administrator on oath."

Hook made four annual settlements of said estate, one at the May Term of each year, the first in 1862 and the last in 1865. At the first settlement he is charged by the court with six per cent on the inventory; on the second settlement with six per cent on the balance of 1862. On the third settlement he is charged with a total interest of $1,460, which is about 2¼ per cent on the balance brought down the year before. And on the last settlement, in 1865, he is charged with $540, which is a little less than 1 per cent per annum on the balance of the previous year. This last settlement exhibited a balance against the administrator of $63,586 76; but in the statements so far there had been scarcely any credit allowance for commission, and none for losses, arising from unavailable debts or unfortunate investments.

A short time after this settlement or account rendered in 1865, the President's proclamation opened intercourse with Virginia, and Hook proceeded thence with a view of settling with the distributees of the estate. A few days after he took charge of the estate, in 1861, he had written a letter to Abraham Curtis, a brother of the deceased, informing him of the death of Fielding Curtis, the value of the estate and the fact of his administration, requesting him to communicate the facts to the other heirs, and to forward him a list of said heirs and their residences. The receipt of this letter was acknowledged in April, 1861, and subsequent facts show that the information forwarded by Hook had been communicated by Abraham Curtis to the heirs as he had requested.

Hook claims that during the war in Missouri the county court had left him to his own discretion in the management of the funds of the estate. That it was difficult to find solvent borrowers. That he was compelled to keep large sums of money on hand wholly unproductive, and that in making some loans he had lost heavily. That in some cases he had loaned on real estate security and the land mortgaged had greatly decreased in value, and he was compelled to buy unproductive land to save himself, and that ultimately, in 1864, when it seemed that paper money would likely become worthless, he had invested over $23,000 of such paper money which he could not safely loan, in gold, on which investment he had lost over $8,000. He also claimed that considerable sums loaned by him on personal security, supposed at the time to be perfectly solvent, had been unavoidably lost. Many of these investments made in this abnormal condition of affairs and at a period when no man knew what was best for himself or others, he feared might possibly not be justified by the courts in case of litigation, and hence his anxiety to make such arrangements as would save himself and his securities from these heavy losses. Hence his desire to see and settle with the heirs in person.

About the middle of June, 1865, taking with him a friend and acquaintance of his county, a Mr. Hockaday, he proceeded to Culpeper county, Virginia, where he found three heirs, sisters of the deceased, Ann Payne, Susan Curtis and Mary Gwinn, who, after a negotiation of several days, in which they were assisted by John J. Payne, a son of Mrs. Payne, and Peter J. Norris, son-in-law of Mrs. Gwinn, sold, transferred and assigned to Hook for a consideration of five thousand dollars paid to each, all their right, title and interest in the estate of said Fielding Curtis, and they gave to Hook a full receipt and acquittance for their respective shares in said estate. The parties were all present at this negotiation and the acquittance or receipt was a joint paper signed by all three of the ladies.

Hook, finding that the remaining heirs, about twenty-five in number, were living in different counties of the State, and one or two of them in Kentucky, he perfected an arrangement with Messrs. Payne and Norris to see them on the subject of a settlement, and he returned to Missouri. During the summer of 1865 they saw the parties interested, and at different dates, as they were able to find them; they procured similar receipts from nearly all of them, estimating a full share at five thousand dollars.

Hook having, as he supposed, paid off and satisfied the distributees, proceeded to close up the demands due the estate, by sale of lands, compromise, &c.; and from his testimony in the case it appears he sustained considerable losses, and felt himself compelled to take a large amount of unproductive property. He made no further settlement of the estate in the county court.

Sometime in January, 1867, Mrs. Ann Payne filed her bill in this suit in the court below against Hook and his securities on the administration bond, in which she charges that the settlements of the estate made by Hook were fraudulent in many respects; that he had concealed and covered up a large amount of the estate, and that the receipt he had obtained from her was procured by misrepresentation as to the true value of the estate. She set out the names of the original heirs, eight in number, claiming for herself an eighth of the entire estate. She asked the court to cancel her receipt to Hook; that the settlements made in the county court be re-stated and corrected, and that she have a decree for one-eighth of the value of the estate, as it might be adjusted.

To this bill there was a general demurrer, which, being sustained, the case was brought to this court, and is reported in 7 Wallace, 425. The decree of the circuit court was reversed, this court holding that Hook and his sureties on the administration bond could be joined as defendants, and that the ruling of the supreme court of Missouri, to the effect that

until a final settlement no suit to surcharge and falsify the accounts of an administrator will lie, had no application as against the rights of the complainant in this proceeding.

In support of the demurrer in this court it was urged that complainant's bill showed there were other distributees, and that those distributees were necessary parties. It was here held that where a court of equity can proceed to a decree "without injury to absent parties, equally interested in the litigation," those absent parties might be dispensed with. It was further said in the opinion of the court, "the present affords an ample illustration of this necessity. The complainant sues as one of the next of kin, and names the other distributees, who have the same common interest without stating of what particular State they are citizens. It is fair to presume in the absence of any averments to the contrary that they are citizens of Missouri. If so, they could not be joined as plaintiffs, for that would take away the jurisdiction of the court; and why make them defendants when the controversy is not with them, but with the administrator and his sureties?" Reference is here made to the language of this opinion, because of subsequent proceedings in the case, to which special attention will be called.

When the cause was remanded the defendants answered, under oath, denying all fraud in the making of the settlements, as well as in procuring the receipt or acquittance in full from the complainant. In the meantime Susan Curtis and Mary Gwinn having filed separate bills of a similar character, in May, 1860, the three suits were ordered to be consolidated and conducted as one.

At the October term of the circuit court, in 1869, the acquittance given by these three complainants was ordered to be cancelled on the testimony chiefly of the complainants themselves, and an interlocutory decree rendered appointing a master to take an account, and directing him to charge Hook with ten per cent. compound interest on all the assets of the estate from the time when they came into his hands,

and allowing him no credit for losses on moneys loaned or invested by him in any other manner. As this decree was not based on any evidence before the court tending to show that Hook had collected any such rate of interest, or that he could have collected such rate during the period while the estate was in his hands, or that he had made any such profit, or indeed any profit at all, by using the funds for himself, the presumption is that this most extraordinary infliction must have been founded on the idea of punishment for the fraud assumed to be perpetrated by Hook in obtaining the receipts from the complainants in Virginia. The legal rate of interest in Missouri is six per cent., but the evidence tended to show that even that rate could not have been obtained during the war.

A paragraph of said interlocutory decree reads as follows: "It appearing to the court, by affidavit of S. T. Glover, this day filed, that there are other persons who are interested in this cause as distributees of Fielding Curtis, deceased, besides the complainants, the master is directed to inquire and report who are the other distributees of said estate, and what payments have been made to them, if any, and what is due to them respectively at the date of his report."

On examining the affidavit (pp. 25 and 26 of record) it appears that ten new parties come before the master and ask to share in the benefits of the decree. These ten parties represented three of the original eight shares. It is stated that one of the eight, Abraham Curtis, had died since the death of his brother Fielding, and Henry Gambs, of St. Louis county, Missouri, is his administrator; also, that Jno. J. Curtis, one of four children of Elijah Curtis, deceased, had died, and said Gambs was his administrator. It was also alleged that Phares Gwinn, one of seven children of a deceased sister of said Fielding, had died, and said Gambs was his administrator. Gambs, who, in this proceeding, represented in one case an eighth, in another one thirty-second part, and in

the third one fifty-sixth part of the whole estate, is admitted to be a citizen of Missouri. All the others are stated to be citizens of Virginia, except two, one of whom, Alfred Gwinn, is a citizen of Tennessee, and the other, Milton Gwinn, is a citizen of West Virginia.

When the case came before the master, these appearers filed a statement, in the form of a bill in chancery, setting up the facts of their heirship, Hook's payments to them, and their several receipts in full to him, and charging fraud in his settlements of the estate, and in procuring the receipts. (See Record, pp. 46, 47, 48, 49, and 50.) The defendants, protesting against this proceeding, and denying the right of the appearers to have the validity of their receipts inquired into before the master, or to ask a correction of Hook's settlements, filed their answer, denying all fraud, misrepresentation, or deceit in the premises. Much new testimony was taken by both parties, as to the circumstances under which the receipts were obtained from the several appearers, and also on questions touching the rates of interest during the war, and the manner of conducting the estate by Hook.

The master made up his accounts according to the directions of the interlocutory decree, calculating interest at 10 per cent. compounded, and found Hook indebted to the estate, after paying all allowed debts, and expenses of administration amounting to four or five thousand dollars, in the enormous sum of $149,199 69. After deducting from this sum $80,609 59, for payments to heirs which Hook had made, including interest thereon, together with commissions, and the inconsiderable sum of $2,454 13 for unavailable and lost debts, a net balance is brought down of $68,590 10, as the amount still due by Hook to the heirs of the estate.

Record, p. 44.

The report shows that Hook had overpaid the two heirs living in Missouri, who represented one-eighth of the whole estate, but finds him largely in arrears to others, over and

above the payments made when taking the acquittances. He says (p. 45 of record) that defendants' counsel had urged that he was not bound by the decree to find the releases of the new parties void. But he continues, "the evidence relating to these releases is about the same as that upon which the court bases its decree in the original case, and that decree is a precedent, and I do not feel at liberty to depart from it," &c. He, therefore, finds them to have been fraudulently obtained and sets them aside. He also says, "I feel bound to follow the decree of the court in the method of computing interest, and in the amount of interest exacted of the administrator, irrespective of the rates of interest in Callaway county." He finds due to the parties, complainants, over and above all payments, $52,463 62, each distribute being entitled as appears on page 44 of printed record.

Exceptions were taken to these findings before the master, and when the report came into court, exceptions were there filed, and also motions made to review the interlocutory decree and for a rehearing.

These were all overruled, but the decree was so far modified as to state the amount at eight instead of ten per cent. compounded. And therefore a final decree is entered in favor of the complainants, including the appearers before the master for $44,873.35, to be distributed among them as set forth in the decree, the share of each distribute being thereafter named. (Record, p. 61.) Among these parties there is given to Henry Gambs, as administrator of Abram Curtis, deceased, $8,227.10; to said Gambs, as administrator of John J. Curtis, deceased, $2,139.93; to said Gambs, as administrator of Pharis Gwinn, deceased, $1,936.68. This complainant Gambs appears throughout the pleadings to be a citizen of Missouri.

From this decree the case is appealed to this court, and the appellants insist that the decree should be reversed.

First. Henry Gambs, being a citizen of Missouri, had no right to institute his suit against the defendants in the court below, and his appearance as a joint-complainant in the case ousts the jurisdiction of the court and vitiates the decree as to all the parties.

It will be observed that this proceeding is original with the administrator. He does not appear in the suit to continue proceedings already commenced by his intestate, and hence he does not come within the principle laid down by this court in the case of Clarke *vs.* Matthewson, 12 Peters, 164.

In that case the jurisdiction had once attached, and the court held that it "could not be divested by subsequent events." There the complainant, being properly in court, died. The law of the State where the defendant resided and in which the suit was brought, required that administration should be in that State. It was competent for such administrator to continue the suit by revivor. But in that case the court expressly says, "if, therefore, the present had been an original bill brought between the present parties, it is clear that it could not have been maintained." Cases of this character are expressly provided for by the Judiciary act of 1789, (see sec. 31,) to the effect that, where parties to suits die, pending such suits, their administrators may revive and prosecute.

It cannot be said that the administrator in this case is a mere nominal party. An administrator is always held to be a real and not a nominal party. (Dodge *vs.* Perkins, 4 Mass., 435.)

This question is settled by the case of Coal Co., *vs.* Blatchford, 11 Wall. 172. One of the points determined is, whether when a trustee sues, the jurisdiction depends on his citizenship or that of his *cestui que trust* or the party for whose benefit the suit is brought. The cases of Browne *vs.* Strode,

5 Cranch, and McNutt *vs.* Bland, 2 Howard, are explained, and it is again declared as a universal rule, that the jurisdiction of the Federal courts depends not upon the relative situation of the parties in interest, but upon the relative situation of the parties named in the record. If the party prosecuting the suit has any power or control over it, if he has any discretion and is not a mere conduit through whom the law gives a remedy to any person aggrieved; in other words, if he be the real prosecutor, with authority to take the avails of the judgment or decree, then the jurisdiction is to be determined by his situation, for he is the real and not the nominal party.

Second. If it be true that Gambs alleges himself to be a citizen of Missouri, then he has expressly put himself beyond the jurisdiction, and the objection may be urged at any time. In the case last referred to it is said, "here the citizenship of the parties is averred in the bill of complaint and the consequent defect in the jurisdiction of the courts is apparent, and a defect of this character thus disclosed may be reached on demurrer or taken advantage of without demurrer, on motion at any stage of the proceedings."

Third. But whether he alleges that he is a citizen of Missouri or not, he surely does not allege that he is a citizen of some other State, and this failure or omission is equally fatal to the decree.

All the facts necessary to give jurisdiction both as to plaintiff and defendant must be averred, or else the whole proceeding will be erroneous.

United States *vs.* Clark, 8 Peters, 436.

The citizenship of both parties must be stated in the declaration to give jurisdiction.

Finlay *vs.* Bank of United States, 2 McLean, 44.

Leavitt *vs.* Cowles, 2 McLean, 491.

To support the jurisdiction of the circuit court of the United States when the interest is joint, it must appear by sufficient averments that each of the plaintiffs is capable of suing each of the defendants.

3 Cranch, 267; 1 Wheaton, 91.

Fourth. This proceeding cannot be justified by the language of the opinion in 7 Wall., 432, where it is said, "should the present suit terminate in a decree against the defendants, it is easy to do substantial justice to all the parties in interest, and prevent a multiplicity of suits, by allowing the other distributees, either through a reference to a master, or by some other proper proceeding, to come in and share in the benefit of the litigation." This language was used in answer to the argument in support of the demurrer that all the heirs were necessary parties. It had already been said that the court could proceed to a decree, and do full justice to the parties before it without affecting the rights of absent distributees. The prayer in the bill of Mrs. Payne was that a decree be rendered in her favor for one-eighth of the estate. She did not ask relief for the other distributees, or any of them. She sued in her own right, and did not pretend to have a joint interest with others. She declared that the receipt given by her was fraudulently obtained. She said nothing as to receipts given by others. The truth is, the receipts of all the appearers were given at a different time from hers, and under different circumstances, and the equities between the parties are different. The court in its opinion expressly held, that if the other distributees should turn out to be citizens of Missouri, "they could not be joined as plaintiffs, for that would take away the jurisdiction of the court."

It surely was not designed to establish the doctrine in courts of equity that where there are several plaintiffs, some within the jurisdiction of the court and others not, and the subject-matter of the litigation is such that each may take his separate decree without joining the others, those within the juris-

diction may sue and those not within the jurisdiction may take an equal interest in the decree when rendered. This, I think, is not the law, and I believe this court never designed to use language from which such an inference could be drawn. In support of what the court did say, reference was made to Story's Eq. Plead., § 89, West *vs.* Randall, (2 Mason, 181,) and Wood *vs.* Dummer, (3 Mason, 317.) The doctrine referred to in Story's Pleading is that generally in such cases residuary legatees, and distributees should all be made parties, but if some of these are out of the jurisdiction of the court and cannot conveniently be made parties as plaintiffs or defendants, "the court will dispense with them and proceed to decree the shares of the parties before it." "The general rule," continues the author, "is dispensed with because otherwise persons having clear rights would without their own default be precluded from asserting them, even when the rights of others would not necessarily be prejudiced thereby."

The case in 2 Mason is one in which Justice Story dismissed the bill, "because the proper parties are not before the court to make a decree, supposing the facts ever so distinctly proved; nor could they as strangers to the other transactions in the bill be properly joined as parties." It was a proceeding against certain trustees, the bill charging defaults against each, to which the other was not a party, &c. A similar condition of things exists in this case. The allegation of fraud in obtaining the receipts in full is what gives each complainant here his standing in court, and these appearers before the master all executed their receipts at a different time from the original complainants. In the one case Hook was present, in the other he was not; and it is neither alleged nor proved that the representations in the two cases were the same. Transactions were inquired into wholly independent of each other. The complainants and appearers had not the same case in court. They could not all have been joined as plaintiffs, both on this account and because of their citizenship, and yet it was held they could join in the benefits of a decree which they could not have obtained.

This case, in 2 Mason, p. 193, perhaps enumerates all cases in which parties in interest may not be joined. Among them, is the following:

"Where the question is of general interest and a few may sue for the general benefit of the whole, or where the parties form a part of a voluntary association for public or private purposes, and may be fairly supposed to represent the rights and interests of the whole. In these and analogous cases, if the bill purports to be not merely in behalf of the plaintiffs, but of all others interested, the plea of the want of parties will be repelled, and the court will proceed to a decree."

Justice Story then instances a suit by a part of a privateer's crew, and the common case of creditors suing in behalf of the rest and seeking an account of the estate of their deceased debtor. In these cases the others may come in and take the benefit of the decree. But in all cases where appearers are allowed to come in and share the decree, the suit itself must have been not only for the benefit of the plaintiffs, but for the benefit of their associates. And in this case it is said that legatees may sue executors "in behalf of themselves and all other interested persons when placed in the same predicament as creditors." (See p. 194.)

The case in 3 Mason is where the creditors of a banking company instituted a suit against a part of the new stockholders to whom the institution had been sold and assigned, for a debt due by the old company. The objection was that all the stockholders were not made defendants. The court held that each stockholder was responsible for an amount of the debt proportionate to the amount of his stock, and the matter could be referred to a master to ascertain the names and number of the stockholders and the amount owned by each, on which a proper decree could be rendered.

It is believed that appearers have never been permitted to come and prove an interest in the decree, except as against the plaintiffs themselves. It is only where the decree is the same whether the appearers are parties or not. For conve-

nience, certain creditors, for themselves and others, are sometimes permitted to sue and obtain a decree against a certain fund—not a part of the fund, but the whole fund. The master finds who are entitled to it; but the amount of the decree is not altered. If no new creditors are found, the plaintiffs take the whole of it. If others show title before the master, they get their share as against the plaintiffs. In no event are the rights of the defendant affected.

It is insisted that wherever the complainant, as in this case, sues for an aliquot part of an estate, the decree is only for such part, and nobody can share with him in the decree. Ascertaining the amount of the whole estate was only an incident. It was necessary to find the whole sum in order to state a fractional part. But no decree was rendered for the whole, nor could such decree be rendered either under the pleadings or according to established principles of equity.—Hallet *vs.* Hallett, 2 Paige, 18; 19 Vesey, 336; 3 Paige, 520. David *vs.* Frowd, 1 Mylne & K., 200. Story's Eq. Pleading, §107, §115.

2. In this case the complainants have the right to cite the administrator before the probate court in Missouri, and have his accounts corrected and the estate settled in such manner as to be binding on all parties. The estate will be a party on one side, and the administrator a party on the other. A balance found there is conclusive on all the heirs, because that court is expressly made their guardian and protector. There the peculiar local difficulties of administrators during the war in the management of funds in their hands would be best understood, and the usages of the court springing up during that terrible period could have been applied in this case as in others, to temper the rigorous exactions of the law in more active, commercial times, and to mete out justice between the parties.

But they have adopted a different course. They make themselves, and not the estate, the party in this proceeding. If they will take this position, they must take it *cum onere*.

They must not claim every advantage, and accept no inconvenience, simply because their own interested testimony would show that Hook deceived them in 1865 as to the value of the Curtis estate. Its value depended chiefly on the question of interest to be charged against him during the war. Charge him with ten per cent compounded, and his statements to the heirs are false, when he got their receipts. But why charge him with such rate? The testimony shows that no such rate could have been obtained. The counsel for complainants tell us that, where a trustee is guilty of fraud, he shall be punished with the highest rate of interest, and that rate compounded. When we ask for the evidence of fraud, we are pointed to Hook's misrepresentations to the heirs in 1865 as to the amount of the estate. The argument is that the estate grew in amount between 1861 and 1865, because Hook was guilty of falsehood in 1865. In other words, if falsehood be the offence, *ex post facto* laws for its punishment are meritorious.

These complainants, at least all who have any standing in court, were, during the war, public enemies. Hook was prohibited from paying them by public and municipal law, by patriotism and good morals. These complainants make themselves parties to this suit, and as parties they must accept all the inconveniences which attach to them as persons. They insist that Hook must not be credited with large losses suffered in loaning the funds of the estate, and that, if he invested them in his own name, and lost in the venture, he can take no credit against them. And it is further urged, that if he neither loaned the funds nor used them in his own business, he is guilty of bad faith to the *cestuis que trust*, because he failed to make the fund productive.

Under such circumstances I insist that, if the complainants demand the whole principal, undiminished by losses, let them take it unenlarged by interest.

In the case of Hoare *vs.* Allen, 2 Dallas, 102, the court says:

"For the time of 7½ years, from the 10th September, 1775, to 10th March, 1783, the defendant could not have paid this money to the plaintiff who was an alien enemy, without a violation of the positive laws of this country and of the laws of nations." And again, "where a person is prevented by law from paying the principal, he shall not be compelled to pay interest during the prohibition." The doctrine of this case was followed in all the courts of this country in reference to English debts, and so held in the face of the treaty of peace, which provided "that there shall be no lawful impediment to the recovery of *bona fide* debts." This clause gave rise to the controversy between Mr. Jefferson, when Secretary of State, and Mr. Hammond, the British Minister, our Government holding that a revival of the debt did not revive the obligation to pay interest—that interest is not a part of the debt, but something added to it by way of damage for the detention of it." The detention being lawful there is no damage.

The rule is that, wherever and whenever any one is obliged by the law, or by the creditor, to keep the money and is not allowed to pay it, he shall pay no interest.

In the Maryland circuit recently, (Jackson Ins. Co. *vs.* Stewart, 6 Am. Law Reg., 732,) it was held that interest was suspended during the late war between citizens of the hostile sections, from the period of the proclamation of war to the proclamation of peace.

In Chamberlain *vs.* Brown, 2 Bland, ch. 221, the language is: "In no case has the chancellor allowed interest to a British creditor during the war. In no instance, as he understands, has the general court allowed interest during the war;" and again, "in various cases of claims exhibited in this court by British creditors against citizens of this State, the chancellor has directed a suspension of interest during the war, and indeed the parties have never claimed it." This doctrine is supported by almost unbroken authority, whether we refer to the decisions of courts, or the writings of publi-

cists. I believe the only exception to the rule is the one laid down by Justice Washington, in Conn *vs.* Penn, 1 Peters C. C., 496, and referred to by Mr. Justice Clifford, in Ward *vs.* Smith, 7 Wall, p. 453, where the creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent authorized to receive the debt."

3. If, however, the court be of opinion that Hook shall account for interest during the war, they must determine the amount of said interest.

First. I refer to the judgments of the probate court in Missouri, where the question has been adjudicated by a court of competent jurisdiction and the one best qualified to determine what was right.

I also refer to the adjudications of the supreme court of that State, that whether an administrator shall be charged with interest on money in his hands is to be determined by the circumstances in each case. He is not so to be charged as a matter of course.

Madden *vs.* Madden, 27 Mo., 544.

It is also there held that the settlements of administrators have the force and effect of judgments.

Caldwell *vs.* Lockridge, 9 Mo., 358.

It is true these settlements may be set aside but fraud must be alleged and proved.

20 Mo., 87; 23 Mo., 236.

Second. If the findings of the probate court be discarded, I then refer the court to the interest laws of Missouri, which absolutely prohibit the payment of compound interest, or even simple interest beyond six per cent., except in cases of positive contract.

Third. If it be considered a better rule to adopt the actual receipts of the administrator, those receipts are given in his testimony on page 30 of the record. Deducting the princi-

pal from the whole amount received, the interest will be left, which is substantially the same as reported in the settlements made.

Fourth. If these rules be rejected, we must then resort to the rate of interest which prevailed at the time, in the vicinity where the administration was being conducted. The only evidence on this subject before the court is to be found in the depositions of seventeen of the most prominent business men of Callaway county.

They without exception state the ruling rate of interest would be less than six per cent. (Record, p. 189 to 208 inclusive.)

The only reply to all this evidence was that Hook, in his testimony admitted that he loaned some money during the war at ten per cent., it appearing that his ten per cent. loans generally proved unprofitable. Instead of getting interest he lost a part of the principal.

Fifth. I insist that the rule enforced in the circuit court in this case whereby a rate of interest greater than the legal rate is adopted, and then compounded against an administrator from the date of administration, is wholly without precedent. It is unprecedented as against any trustee not acting under specific directions to invest. In Missouri an administrator is allowed one year to make distribution, and cannot be compelled to distribute in less than two years without a refunding bond or express order of the court. The court may order him, after one year on exhibit of his accounts showing a surplus, to loan it out, but without such order he may retain the funds without interest for at least two years. Perry on Trusts, page 421, says: "A year is a reasonable time within which an executor may call in the testator's estate and pay all his liabilities." Hence, during that time he is not to be charged with interest at all. But in this case not a day of rest is given. Moneys paid to the administrator any day of

the year are assumed to be invested instantly at eight per cent.

At page 428 of the same work the following is laid down as the rule gathered from all the authorities on the subject:

"If a trustee retains balances in his hands which he ought to have invested, or delays for an unreasonable time to invest, or if he mingles the money with his own, or uses it in his private business, or deposits it in his own name, or neglects to settle his account for a long time, or to distribute or pay over the money when he ought to do so, he will be liable to pay simple interest at the rate established by law as the legal rate in the absence of special agreements."

See the numerous cases cited.

This subject was examined in Bond *vs.* Lockwood, 33 Ill., 214. I quote from the opinion: "Where a trustee or guardian employs trust funds in a trade or venture of his own, whether he keeps them separate or mixes them with his own private moneys, and notwithstanding difficulties may arise in the latter case in taking the account, the *cestui que trust*, if he prefers it, may insist upon having the profits made instead of interest upon the amount of the trust funds employed."

But the court say: "It is sometimes impracticable in applying this rule to trace out and apportion the profits derived by a trustee from the employment of trust funds along with his own, and in such cases the court fixes upon a rate of interest, as the supposed measure or representative of the profits, and assigns it to the trust fund."

In this case, the court says "the guardian employed the money of his wards in his business as a merchant, but no data was furnished from which an apportionment could be made between the capital and the labor and skill bestowed in the prosecution of the business. So a rate of interest was fixed upon as the representative of the profit to which the ward would be entitled. The legal rate of interest in Illi-

nois is six per cent. per annum, and although parties are allowed to contract for any rate not exceeding ten per cent., courts cannot allow more than six per cent. where it has not been specifically agreed upon."

In fixing this rate the court remarks, that "the ward runs no risk from the investment. His money is at no time idle, and he pays no commissions for investment, collecting, and reinvesting, and no expenses attendant thereon."

See Wright *vs.* Wright, 2 McCord, ch. 185. 2 Kent., Com., 231, note (*c.*) Harland's accounts, 5 Rawle, 14 Ill., p. 1.

The whole doctrine of annual or semi-annual rests against trustees in the calculation of interest, proceeds from cases where there is an express direction in the trust instrument to accumulate the income, and where corrupt or grossly improper conduct is established against the trustees.

Hill on Trustees, p. 374.

In a note by Mr. Wharton to the second American edition of this work, the cases are all cited bearing on this subject, (see top-paging 533,) where it is said that "except in cases of a provision for accumulation, a trustee will not be charged with compound interest, though he has mingled the trust fund with his own." The doctrine laid down in 1 Johns Ch., is considered too broad. and Mr. Wharton condemns it as stringent and dangerous. (See Kerr's adm'r *vs.* Snead, Boston Law Rep., 207.)

In 7 Serg. & Rawle, the rule adopted against executors is to charge them with what interest they have made; if that cannot be ascertained, then with what with due diligence they might have made.

In Clarkson *vs.* Depeyster, (1 Hopkins, 424,) the Chancellor said, "compound interest had been allowed in a few cases of gross delinquency, but such interest when computed at a high rate becomes oppressive and unjust."

In the case of Voorhees *vs.* Stoothoop, (6 Halstead, 159,) the court say, when the executor has not used money, or suffered it to lie unemployed, or when he cannot or does not explain or show whether it has been employed, or in what manner; where he shows no account of the receipts and applications of the money, and avows that no interest account was kept, and where it appears that interest on more than one half of the productive capital was annually paid with great promptness, he ought to be charged as nearly as the same can be ascertained with all he might have made or received in the exercise of due vigilance and exertion. "Compound interest, I am satisfied," says the Chief Justice, "ought to be rejected."

The court say that a risk in a man's own affairs, however admissible, may not be proper in fiduciary duties, and compound interest at large rates will endanger the principal.

Perry on Trusts, p. 432, says, "To justify the compounding of interest there must be a wilful breach of duty and not simple neglect; there must be some special and peculiar circumstances. If the money is simply used in business, and it appears that the profits were not equal to the interest, annual rests will not be made." Again on p. 431 it is said, "Where the trustee improperly changes an investment, and refuses to re-invest the money in a legal manner; or if he refuses to invest the fund in the first instance; or if he uses the fund in trade, business, or speculation; or makes an improper or illegal investment, the *cestui que trust* may have the income that would have accrued from the proper investment; or he may have simple interest at the legal rate; or he may take all the profits of the trade, or business, or other investment or employment of the money, and if the trustee refuse to account for the profits arising from his use of the money, or if he has so mingled the money and profits with his own money and profits that he cannot separate and account for the profits that belong to the *cestui que trust*, the *cestui que trust* may have legal interest computed with annual rests."

In a well considered case, 11 Paige, 520, Chancellor Walworth said, if the trustee mingles the trust fund with his own money, depositing and using in his own name, he is to be charged with simple interest, though he may not have received that amount. If he employs the fund in trade, making more than simple interest, he will be charged with the whole profits, either by way of compound interest, or in any other mode best adapted to reach the actual profits. Where the profits clearly exceed simple interest, and also in cases where it is doubtful which is the greater, the *cestui que trust* is allowed his election between simple interest and the actual profits to be ascertained by reference.

I am aware that this court, in 16 Howard, 543, caused interest at the legal rate to be compounded where a trustee for investment had grossly and wilfully abused his trust. But in that case Justice Grier, in delivering the opinion of the court, said, "for mere neglect to invest, simple interest only is given."

Lord Cramworth, in Attorney General *vs.* Alford, 4 DeGex, M. & G., 843–852, said he "could not understand the principle upon which the court can proceed *in pœnam* to punish the executor for his misconduct by making him account for more interest than he had received—that the misconduct of the executor had nothing to do with the amount of interest to be charged against him, unless it be misconduct affecting the amount of interest received."

The laws of Missouri require administrators at the second term after the one at which they settle to render an account of money on hand, clearly implying that for eighteen months at least no interest is to be charged on receipts.

It is also provided that the court may order them to lend any surplus of money, not required for debts or expenses. In the absence of such order, is the administrator bound to invest at all? If not, he should be charged no interest. If bound to invest, the next question is one of prudence and good faith in his conduct; and that brings me to consider one other point.

4. If it was his duty to invest, then these distributees should sustain the losses which he incurred. (For an account of the losses see Record, pp. 134–5–6 and also p. 150.) In support of this point, I refer to a few cases out of many that might be cited.

In Lansing *vs.* Lansing, (45 Barbour, 191,) the supreme court of New York, say that "while trustees are held to great strictness in the management of trust funds, the court will deal leniently with them when it appears they have acted in good faith." "If no improper motive can be attributed to the trustee, the court will excuse the apparent breach of trust, unless the negligence is very gross." In this case the executor was required to invest in real-estate securities. He deposited in bank because he could not safely make the investment required. The court sanctioned his conduct, and say "he was bound to dispose of the fund in the best manner which was practicable under the circumstances existing."

Executors pursuing such a course in the management of the assets of their testator's estate, as a judicious man, looking alone to his worldly interests, would under the circumstances pursue in his own affairs, will be held justified in so doing.

Kee's Ex'rs *vs.* Kee's Creditors, 2 Grattan, 117.

Executors who act with ordinary diligence and attention are not liable for a loss of the funds of the estate; nor are they liable for the mismanagement or insolvency of their agents, which they could neither foresee nor control.

Calhoun's Est., 6 Watts, 185.

See also 4 John Ch. 619, 627, where an administrator, without applying to the court for direction, suffered a surviving partner to sell the joint stock for the joint benefit of the two, he was held not responsible to creditors for the loss. "Administrators acting with good faith and without *wilful* default or fraud are not responsible for loss.

Where a trustee changes an investment without direction of a court of equity, he takes upon himself the burden of proving entire *bona fides* and that there was reasonable ground to believe that the fund would be benefited. Where, however, he is able to make such proof the court will sustain his act.

4 Jones' Eq., N. C., pp. 32, 36.

If the foregoing principles be applied to this case, then a fair interpretation of the language of Hook in purchasing the interests leaves the transaction free from the taint of that monstrous fraud which is conjured up by disregarding the circumstances of the case, and made manifest by reversing the true order of inquiry.

5. I insist that the acquittances should not be cancelled.

To set aside the receipts the complainants rely on the following evidence:

1st. Deposition of Jno. J. Payne. (See Record, pp. 114–5–6 and 154–5–6–7.)
2d. do. Peter J. Norris. (Record pp. 106, 108, and 110, and 166–7–8.)
3d. do. Susan Curtis. (Record, pp. 103–4.)
4th. do. Mary Gwinn. (Record, pp. 110–11–12–13.)
5th. Refunding bond of parties. (See p. 120.)

Defendants refer to
Deposition of Zadok Hook, pp. 132–3 and pp. 30–31.
do. Jno. A. Hockaday, pp. 184–5–7.

For the losses sustained by Hook reference is made to pp. 134–5 of Record.

For the law applicable to this point I refer to brief filed by appellants, at pp. 14, 15, 16, 17, and 18.

For the value of the estate in 1865 I refer to pp. 22 to 25, inclusive, of said brief.

J. B. HENDERSON, *for Appellants.*